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PERMISSIBLE EMPLOYMENT AND ACTIVITIES OF FORMER DEPARTMENT OF DEFENSE EMPLOYEES

HEARING

BEFORE THE

SUBCOMMITTEE ON DEFENSE ACQUISITION POLICY

OF THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

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PERMISSIBLE EMPLOYMENT AND ACTIVITIES OF FORMER DEPARTMENT OF DEFENSE EMPLOYEES

TUESDAY, MARCH 19, 1985

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE ON DEFENSE ACQUISITION POLICY,
Washington, DC.

The subcommittee met in open session, pursuant to notice, at 2:17 p.m., in room SR-253, Russell Senate Office Building, Senator Dan Quayle (chairman) presiding.

Present: Senators Quayle, Levin, Bingaman, Dixon, and Glenn.

Staff present: Alan R. Yuspeh, general counsel; Alan L. Chvotkin, counsel; Jonathan L. Etherton, professional staff member; Gerald D. Strickler, printing and documents clerk; and Marie Chaillet, staff assistant.

Also present: Jeff Minsky, assistant to Senator Cohen; Bernard R. Toon, Henry D. Sokolski, Bob Guttman, and Dr. Bili Hunter, assistants to Senator Quayle; John Rasmussen, assistant to Senator Gramm; Ralph White, assistant to Senator Levin; Edward McGaffigan, Jr., assistant to Senator Bingaman; Charles C. Smith, assistant to Senator Dixon; and Phillip P. Upschulte, assistant to Senator Glenn.

Also present: Bill Montalto, Small Business Committee.

OPENING STATEMENT BY SENATOR DAN QUAYLE, CHAIRMAN

Senator QUAYLE. The subcommittee will come to order.

The subcommittee meets this afternoon to consider an issue which has received some attention over the last several months and is the subject of pending legislation in both the Senate and the House.

A great deal of interest has been expressed in the permissible employment of former DOD officials—both civilians and military officers—once they leave the Department of Defense.

I would like to take a few minutes at the outset today to try to put this issue in perspective.

First, everyone should know that there are now criminal laws on the books restricting the activities of former Government employees when they leave the Government. There is a lifetime ban on employees acting as agent or attorney or otherwise representing someone before, or advocating to, the Government concerning a particular matter on which the former officer or employee had

worked personally and substantially while he was with the Government.

There is a 2-year ban on Federal employees engaging in this same set of representational activities with regard to matters under his official responsibility during the last year of exercising of that responsibility.

There is a 1-year ban on certain senior level Government officials making representative or advocacy contracts on any matter to the agency in which the official had been employed while with the Government.

It should be recognized that these existing laws generally are intended to prevent a Government employee from using confidential information which he has obtained while with the Government, or special access or influence from his Government employment, for the benefit of a private entity and to the possible detriment of the Government.

It is important for us to find out whether the present laws, which impose serious criminal penalties on those who violate them, are enforceable and are sufficient to meet the goal they were intended to achieve.

The new interest in this so-called "revolving door" problem seems to arise out of a different concern. It appears that Government employees in contract negotiation or administration roles may not perform their responsibilities to the fullest possible extent if they contemplate the possibility of future employment with the company they are negotiating with or overseeing.

In other words, some people assert that some Government employees might be tempted to be overly accommodating in their Government role to improve their own job opportunities when they leave Government.

First, is there any evidence to suggest that such derelictions of duty actually exist and, if so, what are the appropriate remedial measures against conduct which is already prohibited?

Second, and perhaps even more important, does such hiring create an appearance of impropriety that undermines confidence in the defense procurement process?

If so, what are the appropriate remedial measures that balance the need for confidence in the procurement process with Government employees' legitimate desires to secure employment in the private sector that utilizes their skills and experience?

Finally, for any proposal that is made, we need to consider the costs of the proposal. For example, we must be certain that we don't adopt restrictions that are so onerous that the Department of Defense will no longer be able to attract talented people from industry to serve in Government.

If new legislation has that impact, it may create new problems far more serious than the supposed problems the legislation is intended to solve.

Moreover, we have some responsibility to be fair. We ought not restrict employment opportunities beyond what is demonstrably necessary to ensure the integrity and the appearance of integrity of our Government process.

I would note for the record that there is legislation pending in both the Senate and the House on this issue. The legislation is Gov-

ernment wide, and so it has not been referred to the Armed Services Committee. But the legislation is obviously aimed at DOD, as DOD accounts for about 80 percent of all Government procurement.

This is not a hearing on the proposed bills, but I think it is appropriate for us to discuss the additional restrictions they would impose.

Before we turn to Mr. Taft, I will ask Senator Dixon if he has any opening comments.

Senator DIXON. Mr. Chairman, today's hearings will focus on an important issue that has been raised in the press and by others: The "Revolving Door" that has employees in the Armed Services going to work with contractors whom they have previously overseen in the procurement process.

Congress has addressed this problem in the past through legislation restricting the employment of former military procurement officials.

I hope today's hearing will help us determine if stricter legislation is needed or whether the Department of Defense needs to better enforce the existing laws.

We must look carefully at the entire situation to balance the rights of individuals to seek employment with the rights of citizens to expect that their hard-earned tax dollars are being spent wisely and honestly.

I hope today's hearing will point us in the right direction.

Senator QUAYLE. Thank you, Senator Dixon.

We also have a prepared statement from Senator Charles E. Grassley which will be inserted in the hearing record at this point.

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

Mr. Chairman and Members of the Subcommittee on Defense Acquisition Policy. I want to thank you for holding this hearing today to investigate permissible employment and activities of former Department of Defense employees. As you are well aware, I have a keen interest in issues affecting the Department of Defense, especially issues concerning the manner in which hard-earned taxpayer dollars are spent.

Earlier this year, Senator Pryor and I introduced legislation to close the revolving door that allows Government employees to gain employment with contractors whose contracts they had supervised while employees of the Federal Government. Our legislation would prohibit contractors from hiring anyone who served the Government in a procurement function involving that contractor for a period of 5 years, beginning on the date that employee leaves Government service.

While conflict of interest problems exist in all areas of the Federal Government, such problems are insidious in the Department of Defense, in part due to the pressure to retire at an early age placed on military officers. Examples of the revolving door conflict abound. Even if the hiring of DOD employees by contractors whose contracts the employees had supervised is legitimate, the apparent conflict of interest compromises the credibility of Government employment and procurement activities.

We are not attempting to damage the reputations or employment opportunities of honest employees of the Federal Government. Rather, it is our intention to remove an apparent conflict of interest in the system. While our legislation will not ultimately resolve the conflict of interest issue, we believe this is a necessary first step in removing the appearances of conflict of interest. Perhaps one way to eliminate conflicts of interest within the DOD procurement program is to replace the procurement process now handled by military officers, often with little or no training in procurement or contract law, with civilians who have been trained in these areas. We must continue our efforts to secure more responsible procurement and employ-

ment practices within the Federal Government, and your hearing today will provide a forum for discussing alternatives to the present system.

An equally if not more serious problem exists in the higher levels of government employment. We must also address the revolving door conflicts of interest as such conflicts pertain to employees at the assistant secretary level. As the Association of the Bar of New York stated in a 1960 study, "If a man is in a position of conflicting interests, he is subject to temptation however he resolves the issue. Regulation of conflicts of interest seeks to prevent situation of temptation from arising . . . ." I will be happy to work with you in resolving the many issues which have arisen concerning the revolving door, and commend your efforts to seek further responsibility and accountability for the manner in which the Government does business.

Senator QUAYLE. The first witness is William Howard Taft IV, the Deputy Secretary of Defense.

Mr. Taft, welcome to this subcommittee. I think I might note at the outset this is your first appearance before the subcommittee.

We know of your long-time interest in public service. We have talked about procurement in general, the revolving door specifically.

So, on behalf of the subcommittee we welcome you to your first appearance. Probably as we progress, we will look forward to more appearances because this is a very timely and important issue.

You may proceed.

STATEMENT OF HON. WILLIAM HOWARD TAFT IV, DEPUTY SECRETARY OF DEFENSE

Mr. TAFT. Mr. Chairman, let me say I am delighted to appear before your subcommittee.

As you have said, you and I have talked about the subcommittee's work. I will be delighted to appear before it whenever you think that my appearance can be helpful to you in working on the important problems that the subcommittee must address and that we in the Department will work with you in addressing.

I have a prepared statement prepared and I would ask that it be submitted for the record. If I could just briefly summarize it for the subcommittee, I think that would be faster, then we could go to any questions that the members might have. I will do my very best to answer them.

Senator QUAYLE. Your entire testimony will be inserted in the record.

[See prepared statement, p. 6.]

Mr. TAFT. Thank you very much.

I appreciate the opportunity to appear before you today and to address an issue that is an important concern for all of us, the rules governing the employment of military and civilian members of the Department of Defense after they leave Government service.

It has been noted that some military officers and civilian employees working in procurement and related fields, upon departure from the Department of Defense, accept employment with contractors with whom they may have dealt as DOD representatives.

There is concern that such employment may not be in the interest of the Government and may invite corrupt practices.

Second, and I take these concerns very seriously, we believe that it is essential to maintain the highest standards of integrity in the Department.

We recognize that there is room to improve enforcement of the rule as well as public perception of employee integrity. We pledge our support to the development and enforcement of appropriate standards. This hearing provides a good opportunity to explore the problem.

There are those who are uncomfortable with the idea of any former Government officer or employee working for a firm that does business with the Government. However, Congress has consistently concluded that this is not improper in and of itself.

What is improper and should be firmly prohibited is the Government employee's use of his or her Government position or influence resulting therefrom:

First, for personal gain; second, to the detriment of the Government; or, third, in a manner which gives an unfair advantage to any private entity.

The existing law prohibits former officers and employees from such improper use of their influence or position. The law has been tailored carefully to balance the right of the individual to try to make a living against the right of the public to be assured that official relationships will not be improperly exploited.

In my prepared statement I have reviewed the existing statutes and regulations bearing on this subject. I will not repeat them here.

My own view is that the current law works well to address actual conflicts of interest and specifically with regard to postemployment problems.

The provision that deals with the negotiation of employment while in office and the requirement to disqualify one's self from active involvement in an activity which bears on the interest of that prospective employee are well established and I think work well to deal with the problems that they are addressing.

It may be, however, that public confidence in Government programs could be enhanced by legislation addressing some issues of appearance. If this could be done without substantially or needlessly circumscribing individual opportunities, I believe it would be a worthwhile effort.

There is also some question whether limitations on representational contact sufficiently circumscribe post-Government activities. Certainly there are suspicions raised when an individual moves directly from the Government side to the contractor's side of the same project.

To the extent that a problem is identified by the subcommittee in this connection, you may be assured that we will work with you to address it.

Recently several legislative proposals have been introduced in the Congress bearing on this subject. They are being studied carefully at the Department and detailed analysis and comment will be furnished to the appropriate committees soon.

Although there is a statutory and regulatory framework to prevent Government officers and employees favoring contractors in order to gain future employment, there is also some question whether limitations on representational contact sufficiently circumscribe post-Government activities.

Finally, let me assure you that at the Department of Defense we share your desire to improve efficiency in our contracting process. But it is important that legislative action be no more sweeping than necessary.

In our Nation there is considerable movement of individuals within industry groups, even among competing organizations. The exchange of ideas and experience generally is beneficial. We often find it advantageous in our programs to bring people into the Department for limited periods to capitalize on their background and experiences.

I believe that contractors find it valuable to be able to hire people with expertise also who may have obtained experience in the Department of Defense and they, when hired, also contribute effectively to our country's defense by working on important Government contracts.

Overall, I believe that the movement of individuals between Government and industry is far more often beneficial to the Government than it is detrimental. When we find real instances of actual damage, the law does provide adequate remedies.

Mr. Chairman, I will be very glad to answer any questions on what I have said here or indeed on any of the subjects related to the bills that you would like to raise.

[The prepared statement of Mr. Taft follows:]

PREPARED STATEMENT OF WILLIAM H. TAFT IV, THE DEPUTY SECRETARY OF DEFENSE

Mr. Chairman and Members of the subcommittee: I appreciate the opportunity to appear before you today to address an issue that is an important concern for all of us, the rules governing the employment of military and civilian members of the Department of Defense after they leave Government service. The movement of persons between Government and industry or industry and government can significantly affect public perception of the integrity of Government workers.

It has been noted that some military officers and civilian employees working in procurement and related fields, upon departure from the Department of Defense, accept employment with contractors with whom they may have dealt as DOD representatives. There is concern that such employment may not be in the interest of the Government and may invite corrupt practices.

The Secretary and I take these concerns very seriously. We believe that it is essential to maintain the highest standards of integrity. We recognize that there is room to improve enforcement of the rules as well as public perception of employee integrity. We pledge our support to the development and enforcement of appropriate standards. This hearing is an opportunity to explore the problem.

Before discussing the need for change it may be helpful to review the laws that presently are in effect. In doing so it is important to be aware of all the rules relating to the ethical conduct of employees. Focusing solely on the postemployment rules reveals only half of the accountability picture.

It is clear that the concerns expressed by this committee and shared by the Secretary and me relate to conduct both during and subsequent to government employment and that the propriety of employment after leaving Government service is inherently connected to the individual's conduct both before and after departing. Let me briefly summarize the rules. Four statutes relate to conduct during government service:

1. 18 U.S.C. § 203 prohibits officers and employees from receiving or seeking compensation for services rendered in connection with any particular matter in which the United States is a party or has a direct and substantial interest. This section reaches situations in which the judgment of a Government agency might be influenced by reason of payments to a Government employee.

2. 18 U.S.C. § 205 prohibits Government personnel from acting as agents for anyone else before a Government agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

3. 18 U.S.C. § 208(a) requires executive branch personnel to refrain from personal and substantial participation as Government personnel through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any particular matter in which they, their spouses, minor children, partners or, businesses with which they have a financial interest.

4. 18 U.S.C. § 209(a) prohibits executive branch personnel from receiving any compensation from a private source for their Government service.

Three statutes relate to postgovernment employment conduct:

1. 18 U.S.C. § 207 places the following restrictions on departing officers and employees of DOD (including military personnel):

Permanent bar.—A former Government employee may never serve as another person's representative to the Government on a case, contractual matter or other similar application or proceeding in which he or she participated "personally and substantially" while a Government employee.

Two-year bar.—For a period of two years after leaving federal service the individual may not serve as another person's representative to the Government on any particular matters which were actually pending under the former employee's "official responsibility" in his or her last year of service.

Senior Employee, one-year bar.—This applies only to persons occupying certain high-level positions that have been designated as "Senior Employee" positions. For one year after leaving federal service, Senior Employees may not represent anyone other than the United States before their former agency on any particular matter pending before or of substantial interest to, the agency.

Senior Employee, two-year bar on assisting in representation by personal presence.—For two years after leaving Government employment, a former Senior Employee may not assist in the representation of another person by personal presence at an appearance before Government on any particular matter in which he or she personally and substantially participated while in Government.

The last revision of these rules occurred in 1978 after extensive Congressional hearings. Although the employment traffic between DOD and industry was exhaustively reviewed, very few instances of actual abuse were disclosed. The resulting legislation continued to restrict certain representational activities and added the blanket 1-year "cooling off" period for "Senior Employees." It did not prevent Government personnel from accepting employment with firms with whom they had dealt on behalf of the Government, but was focussed on representational activity.

2. 37 U.S.C § 801(b) prohibits retired regular military officers from sell ing supplies or war materials to the Defense Department and related agencies for a period of three years after retirement.

3. 18 U.S.C. § 281 prohibits retired regular military officers permanently from selling to their own former military departments.

The statutes governing standards of conduct are supplemented by a variety of regulations. Most of these are based on an executive order (E.O. 11222, May 8, 1965) and are implemented by regulations promulgated by the Office of Personnel Management (5 C.F.R. Part 735), the Department of Defense (32 C.F.R. Par. 40), and the subordinate components of DOD.

It is the purpose of the regulatory scheme, in the words of the Executive Order, "that employees avoid any action, whether or not specifically prohibited . . . which might result in, or create the appearance of—

(1) using public office for private gain;

(2) giving preferential treatment to any organization or person;

(3) impeding government efficiency or economy;

(4) losing complete independence or impartiality of action;

(5) making a government decision outside official channels; or

(6) affecting adversely the confidence of the public in the integrity of the Government."

The Executive Order and regulations carry out the stated intent by establishing behavioral rules in a variety of areas. Among the limitations on the conduct of DOD officers and employees that bear directly on matters before this subcommittee are the following:

Gratuities may not be accepted from those who have or seek business with the Department except as to items of nominal value;

"Inside information" may not be used by DOD personnel to benefit themselves or others;

Outside employment is prohibited if it interferes with official duties (including the duty of loyalty to the Government interest), or otherwise involves a conflict of interest;

Government personnel and facilities may only be used for official purposes.

DOD personnel are prohibited from official dealings with former Government personnel whose participation in the transaction would violate the rules.

The preparation of financial disclosure reports provides annual reminders to reporting individuals of potential conflicts between personal interests and official duties. These requirements also are powerful tools that facilitate the enforcement of the standards of conduct.

With respect to the specific issue of postgovernment employment, there are those who are uncomfortable with the idea of any former Government officer or employee working for a firm that does business with the Government. However, Congress has consistently concluded that this is not improper in and of itself. What is improper and should be firmly prohibited is the present Government employee's use of his/her government position or influence resulting therefrom (i) for personal gain, (ii) to the detriment of the Government, or (iii) in a manner which gives an unfair advantage to a private entity. The existing law prohibits former officers and employees from such improper use of their influence or position. The law has been tailored carefully to balance the right of the individual to try to make a living against the right of the public to be assured that official relationships will not be improperly exploited.

It has been suggested that the movement of DOD personnel into industry increases procurement costs. We have not seen evidence of this nor evidence that DOD officers or employees relax contractor requirements in order to curry favor and gain future employment. We doubt that this is a common practice or a substantial problem. On the contrary, I believe a contractor is more likely to hire a departing DOD official who has aggressively represented the Government's interests. The assumption that contractor job offers are extended to those who "do not rock the boat" is not based on any evidence that has been made available to us. Furthermore, when such cases are discovered, the law provides adequate tools to punish offenders and hold them accountable for their dishonesty.

The field of Government procurement is administered by a highly complex system of laws and regulations and the products and services procured often are very sophisticated or "state of the art." The management of the Government's business requires skilled and talented persons. Our ability to attract such persons into Government service will suffer if there are substantial impediments to future employment. Persons with talent will shun procurement and related areas of Government service if they know they will be unable to apply their skills and experience in future employment. This disincentive to Government service will apply to all grade levels. Not only will the most capable young individuals fail to apply for entry-level positions, but it may become even more difficult to attract skilled scientists and businessmen for senior appointee positions.

Recently several legislative proposals have been introduced in the Congress. They are being studied carefully at the Department and detailed analysis and comment will be furnished to the appropriate committees soon.

In considering what legislative action may be appropriate, the Committee should be advised of several steps to tighten controls that are being taken within our Department:

Educational procedures are under review to insure that all personnel are thoroughly familiar with all of the postemployment rules.

A thorough review of enforcement procedures by all DOD components is under way. We are looking for ways, within our authority, that we may improve the enforcement of the existing rules.

Other non-legislative options may be explored. For example, more detailed postemployment reporting procedures could be required pursuant to 10 U.S.C. § 2397. Such detailed reports would facilitate the identification of potential violations and would deter offenses. They would also help us to better understand and control the scope of the problem.

Although there is a statutory and regulatory framework to prevent Government officers and employees favoring contractors in order to gain future employment, I recognize that many people are uncomfortable with the present situation. My own view is that the current law works well to address actual conflicts of interest. It may be, however, that public confidence in government programs could be enhanced by legislation addressing some issues of appearance. If this could be done without substantially or needlessly circumscribing individual opportunities, it would be a worthwhile effort. There is also some question whether limitations on representational contacts sufficiently circumscribe postgovernment activities. Certainly there are suspicions raised when an individual moves directly from the Government's side to the contractor's side of the same project. To the extent that a problem can be identified you may be assured that we will work with the committee to address it.

If there must be limitations on the employment of former Government personnel they should be carefully crafted. Very rough estimates of the numbers of persons with procurement and related responsibilities have been developed. These are noted to suggest the magnitude of the problem. We have identified about 155,000 military and civilian occupational positions in this area. To look at this from an organizational viewpoint, much of the procurement business is transacted by the commodity commands of the military departments. About 465,000 civilians are employed by the major commodity commands.

The Ethics in Government Act imposed special postgovernment limitations on a class of officials designated "senior employees" (18 U.S.C. § 207(d)). The statutory definition of this class was implemented by regulations promulgated by the Office of Government Ethics. A similar approach to any new restrictions would permit "fine tuning" of the standard. This would accomplish the desires of the Congress without unduly burdening large numbers of persons whose after-Government activities give no cause for concern.

The active participation of the Office of Government Ethics will ensure uniform application of the standards throughout the Executive Branch. To the extent that this is a Government-wide problem we suggest that any remedial legislation be applicable to all branches.

Finally, let me assure you that at the Department of Defense we share your desire to improve efficiency. But it is important that legislative action be no more sweeping than necessary. In our nation there is considerable movement of individuals within the various industry groups, even among competing organizations. The exchange of ideas and experience generally is beneficial. We often find it advantageous in our programs to bring people into the Department for limited periods to capitalize on their background and experience. Overall, I believe that the movement of individuals between Government and industry is far more often beneficial to the Government than it is detrimental. And when we find real instances of actual damage, the law provides adequate remedies.

I would be happy to respond to your questions.

Senator QUAYLE. Thank you very much, Mr. Taft.

Let me start out by agreeing with what you said. In effect, you have identified the problem as perhaps as much appearance and perception as there is in perhaps changing laws.

Although you indicated that once we identified what the problem is we are trying to correct, then you would be willing to work with us to try to come up with a remedy to that problem. I certainly concur.

It is incumbent upon us and the subcommittee to try to identify this problem. I think the proposed legislation, in the way I understand it, whether it is 5-year prohibition or somewhere in between, is in essence saying that the current laws, the current regulations, the current enforcement, thereof, do not go far enough in the scope of prohibition on what kind of conduct should be denied or perhaps questioned.

One of the things that is of some concern, and I would like to ask you if this is a problem, is that presently we have laws that say you have a 1-year ban, 2-year ban, 3-year ban, depending on where you are in employment, on direct contact with DOD, once you leave the Government.

Do you think it would behoove us to move beyond that direct prohibition and to expand that prohibition to conduct within the corporation itself involving coming up with strategies or input that would directly affect a contract that that individual had substantial jurisdiction over or involvement in, whether they were assistant secretary, program manager or contract officer or whatnot?

Should the legislation contemplate going beyond the direct representation, the direct involvement with the Government and to look

at perhaps even dealing within the corporate structure specifically with that contract?

Do you think that is a problem area, at least from the perception point of view, appearance point of view, or perhaps a practicality that we find ourselves in today?

Mr. TAFT. Mr. Chairman, I think what you have stated is a problem of an appearance of conflict of interest, not an actual conflict of interest, because the employee would at any given time have only one interest to serve, either the Government before he leaves it or the contractor after he has left the Government.

There is no actual conflict of interest in the case that you pose, as I understand it.

Now, the question that is raised by some of the legislation that has been introduced is what if there is an appearance of conflict of interest which is generated by an employee switching sides from the Government to the contractor.

Assuming that it is just an appearance problem and one that is not reached by present laws, should we do something to stop that?

My own view is that where there is an appearance of conflict of interest and that is permitted, that it is desirable to enhance the confidence of the public in the integrity of Government by reducing the possibility for such appearance and some of the statutes actually on the books do that.

Because you are only dealing with an appearance problem, however, I would be reluctant to support legislation that imposes real substantial costs on individuals, more than is going to be turned back to the public in increased confidence.

In other words, it seems to me to deal with an appearance problem by imposing real costs on individuals is something that one should be reluctant to do unless it is demonstrated that the appearance problem is extremely severe.

That is a rather general type of answer, but I think to get to some of the bills that are before you I would say they appear to me to impose rather substantial costs on employees, limiting their opportunities for employment, some of them, up to 5 years after they have left the Government, going back to companies with which they might have been tangentially involved over the previous 5 years.

It seems to me that this type of circumscription of the opportunities available to an individual is totally unnecessary to reach what, to my mind, has not been demonstrated to be a large problem.

Senator QUAYLE. When you talk about the appearance problem, do you have any examples in mind that have created the appearance problem from your perspective?

Mr. TAFT. Yes, I have heard of some instances and they certainly present an appearance problem. I would say that a number of them have been identified in the press.

Senator QUAYLE. Which ones?

Mr. TAFT. We have had a situation where some Government employees on our side working on a contract with the Hughes Aircraft Corp. went and worked on the same contract for Hughes shortly after they stopped working for the Government. Not just one person, but I understand two or three.

Senator QUAYLE. They went to work for Hughes on the same contract?

Mr. TAFT. That is my understanding.

Senator QUAYLE. The present law does not bar them from doing that?

Mr. TAFT. The present law does not bar that.

Senator QUAYLE. Do you think that law should bar that?

Mr. TAFT. I think we need to look to see what kind of costs this type of activity is imposing on the confidence that the public has in the integrity of the service that it receives from Government employees.

If we determine that the public's confidence in the integrity of Government is substantially impaired by this type of activity, then I would be prepared to do something to address it. I am not sure that the practice is widespread or that the public's confidence has been substantially impaired. I think we need to look at that.

Senator QUAYLE. I certainly concur. This is a balancing contest. We need to look at the costs involved against the benefits we get by concluding this action or restoring faith in the procurement system.

A lot of the discussion, whether it is this or other things, led the Senate Budget Committee to cut $20 billion out of the Defense budget and it may go even further. A lot of it is based on perception and appearances. They don't have any real way of knowing how they are going to get there because we have not yet figured out what it is going to mean.

I want to go back to this Hughes thing as an example of appearance and perception.

Let me ask this question. If an individual in a position of authority, decision-making responsibility, has substantial involvement with a particular contractor and then goes to work for that contractor, shouldn't he be precluded from having involvement in that particular contract, not with other contracts in the area, but with that particular contract?

Don't you think they should be prohibited from having involvement in that particular contract? Isn't that somewhat of the nub of the problem?

Certainly if we don't have that, then I think the appearance problem might be somewhat justified, even getting into the balancing of loss versus benefit.

Mr. TAFT. I would say if we find that this is a frequent case—and I don't think, incidentally, that it is, but there are some examples of it—if it is a frequent case and one that is cause for concern, therefore, and if one could, as you have suggested, with a very narrowly crafted prohibition which would not greatly circumscribe the opportunities available to that employee.

After all, there are several hundred thousand contractors and just not being able to work with them is not circumscribing one's option too heavily. If you narrow it down to the one contract, then I think you are getting to the stage where you could say that we have not severely limited the options for the individual involved and yet we have addressed something that was disturbing the public's confidence in the integrity of our system.

That is the type of approach that I would favor. It is the narrowest possible circumscription to deal with a specifically identified problem. I think the one you have given I would be very interested in working with the Committee on that.

Senator QUAYLE. I personally feel that we have to be very careful on this issue because the tendency is that if we take a broad swipe at this problem, we are going to come up with rather broad legislation that will be counterproductive and will not be useful, in my opinion, and is something we should not do, but I believe if you look at the example I just gave you, if they have a substantial involvement in a contract and then they go to work with that contractor, then they should not be involved in that contract itself.

When I say involved, not just involved in the direct representation going in and talking with the Government, but even involved in working explicitly with that contract and the contractor.

Don't you think these are some of the post-Government activities that we ought to be concerned about, not only from the appearance point of view, but basically—you have been a lawyer and you have been around here quite a while—don't you think that is a bit of a conflict of interest and something we should not encourage and perhaps should prohibit?

Mr. TAFT. I would be inclined to have the same sense of priorities as you do. If I could bring it down to the three elements of the statutes on the books, they regard the type of activity which typically is identified in representational activity.

There is the particular matter limitation and there is the particular matter representational activity and personal and substantial involvement.

I would say personal and substantial involvement is probably a good thing to keep and I would continue to require that.

Your example would keep also the particular matter and I think that is probably wise. It would expand from representational activity to any type of employment. I would be inclined to agree with you that that is the area, if we are going to expand the coverage, probably it is the representational type.

You might include employment, and so on, that would be the area you would want to look at, not the particular matter so much and certainly not personal and substantial involvement.

Senator QUAYLE. I will ask one other question and then I will yield.

Would you give to us some of the problems that you have in recruiting top people to the Department of Defense, considering all the restrictions and prohibitions that we presently have?

I know, for example, your under secretary slot for R&D is still vacant. You have a couple other assistant secretary slots that are vacant.

As you recruit and try to convince people to come to work for the Government, do they point out some of the current restrictions and prohibitions that are particularly cumbersome and hard to process in their decision whether they are going to come to work for the Government or not?

Mr. TAFT. Yes, they do and, of course, there are many factors that go into that.

There are attractions that we can offer in Government service that can't be matched in the private sector which appeal to many people.

There are also many drawbacks to it that have been pointed out to me by people I have been trying to recruit. They include possibly in some instances—and they have been mentioned to me—public employment restrictions on opportunities. They also include financial sacrifices and moving and family stress, and so forth, and longer hours, things of that sort.

It is hard to say how many post-employment restrictions influence the overall decision where many factors obviously play, but it is one and it is on the down side.

Senator QUAYLE. Thank you.

Senator Levin?

Senator LEVIN. Mr. Chairman, thank you.

This is a very important hearing, a long overdue hearing, in my view, on the revolving door issue. I think we not only have a revolving door, but a revolving door with very, very few impediments. Indeed, we may be giving incentives to people walking through that door.

It has not only created a credibility problem for Government when people read that our employees end up in the employ of a company, within a few days after retirement, over which they have had supervision. I think it is beyond that.

I think we are tolerating the situation which encourages people to negotiate with future employers while they are working for the Government. I don't think there is any alternative but to reach that conclusion.

I would like to ask you, Mr. Taft, about that. We have thousands of people each year who have a high level of supervision over companies for whom they then go to work. They negotiate contracts with those companies, they work on quality control on those companies' contracts. They are above a certain level of supervision.

We have to put a great deal of confidence in them that they are going to fairly exercise the responsibilities on behalf of the taxpayers. Then within days after their retirement they end up on the other side.

You call that an appearance problem and it sure is that. Is there something beyond that?

Isn't it obvious that these folks are discussing with their future employer that employment while they are on the job with us?

Mr. TAFT. Let me say that where they do go from one side to the other in a matter of days, that certainly raises a question which, in my judgment, should in every instance be investigated as to whether there was a violation of the statute which prohibits the personal and substantial involvement in any matter in the Government by a Government employee affecting a person with whom he has financial interest, and the prospect or the negotiation of future employment is a financial interest within the meaning of that statute.

We should investigate those.

Senator LEVIN. Have you investigated those?

Mr. TAFT. We have.

Senator LEVIN. Have you ever found a violation of that statute?

Mr. TAFT. I am not aware of a violation.

Let me go on to answer the second part of your question which I think is important.

Even where there is not a violation, where the man in fact retired genuinely and goes off and subsequently negotiates his employment with that contractor, that does indeed raise an appearance problem. I don't minimize that appearance problem.

As I mentioned to the Chairman, an appearance problem erodes the confidence of the public in the integrity of the Government just as much as an actual problem and we need to be concerned about it.

If we can craft a remedy that will ameliorate that appearance problem without substantially impinging on the opportunities of employees—it is very possible that we could—I think we should do that.

Senator LEVIN. I have no problem in crafting a remedy for the appearance problem, but that is not getting to my question.

We have 2,200 people who accepted jobs with companies over whom they had important supervisory responsibility relative to contract negotiations, enforcement or quality control. All these forms are submitted to you and to us. We have a long list of people who went to work immediately after they left the Pentagon.

Is there any doubt in your mind that an employment discussion took place while the person was on the job with us?

If somebody leaves us on April 1 to accept employment with General Electric on April 4, is there any doubt in your mind there might have been some discussion with the future employer while that person was employed by us?

Mr. TAFT. Let me make clear, you can have discussions. What typically happens, and I received notes regularly when I was General Counsel for the Department, is that you get a letter from a person who is planning to leave and they will say:

> I have been approached by General Electric and I am considering employment with them and I disqualify myself from participation in any matter relating to General Electric so that I can negotiate.

There is no proscription and I don't believe there should be any proscription on negotiating employment while you are an employee of the Department of Defense.

It is essential when you do that and in many of those cases it might be absolutely clear that we could look at our files and see in the case you mentioned, if the employee 6 months before he left the Department files a statement saying he was not going to work on anything with General Electric because he had begun discussing employment with them.

That is no violation. He has not worked on the General Electric contract since he had started discussing employment.

Senator LEVIN. What does he work on? His full-time job is to deal with that contract?

Mr. TAFT. In that case he would not be able to file the statement I have given and that would be a different case.

In many cases people do negotiate employment and stop working on matters affecting that contractor. That is the way it is done. That would explain a very short hiatus.

I don't know the facts on the specific matter that you give, but in each case I would agree with you it should be looked into. It is a criminal statue, it is not anything that we take lightly or should take lightly.

The circumstances you give should be, in my view, quickly explored and resolved one way or the other.

Senator LEVIN. I want to pursue this a little bit. I am not suggesting there was a crime committed in any specific case, by the way. I am just looking at hundreds of cases where there was an immediate transfer of somebody from our payroll where he was paid to supervise a company to that company's payroll, hundreds of cases.

Is there any doubt in your mind that discussions took place where there is no hiatus relative to that future employment?

Mr. TAFT. I mentioned the Hughes case and I think, frankly, there are some other instances that have come to my attention, but they number in the single digit rather than in the hundreds where people have gone from one side to the other dealing with the same contractor.

Because a person goes to work for a defense contractor does not mean he was working on that defense contractor's business.

Senator LEVIN. I understand that. I am talking about where they move to that defense contractor over whom they had supervision or with whom they did negotiate or some contract where they had quality control decisions.

Mr. TAFT. Personal or substantial involvement is a case for criminal law.

Senator LEVIN. My question is: In what percentage of the 2,200 cases last year was there direct involvement between the individual working for the Government and the contractor for whom he went to work? What percentage of the 2,200?

Mr. TAFT. My impression is that it is a very small number. The Hughes case is one I have heard of and I think I have heard of one or two others, but it is not anything like a large percentage factor. My information is, it numbers in the single digit.

Senator LEVIN. You are saying in less than 10 out of the 2,200 cases did the person go to work with a corporation with whom he had significant business dealings while he was working in the Government?

Mr. TAFT. You have asked me how many cases I have heard of. I have not heard of as many as 10. I do not know of the precise cases, but I have not heard of as many as 10.

Senator LEVIN. I am asking what is that figure? Does the Defense Department know in what percentage of the 2,200 the person went to work with a company with whom he or she had direct dealings in negotiating, quality control or had significant business dealings?

Mr. TAFT. I do not know. That is a very important question and we should get an answer for you.

Senator LEVIN. You ought to take a look at these forms. When you look at the forms, there is no place on that form where he or she indicates the name of the company they are going with and whether or not the company they are going with is one with whom they had dealings.

Mr. TAFT. There would be no way to conclude that they had.

Senator LEVIN. Shouldn't the form tell us that?

Mr. TAFT. I think probably it should. Of course, if they filled it out, that would be very helpful to you. I mean if they said, yes, I have been working on this guy and I have gone off to him. The Chair identified this as a serious problem and that is exactly the case.

Senator LEVIN. I am talking about the form, Mr. Taft. I am asking you in what percentage of the 2,200 cases last year where an employee of the Defense Department above a certain level went to work with a defense contractor did they go to work with a defense contractor with whom they had significant dealings?

Mr. TAFT. I do not know the answer.

Senator LEVIN. Will you submit that for the record?

[The information follows:]

Mr. TAFT. The present reporting form (DD Form 1787) asks for the information required under the statute establishing the reporting procedure, §2397 of title 10, United States Code. As Senator Levin observed, the form does not require the reporting individual to reveal any pre-departure responsibilities involving the contractor with whom he or she is now employed. Thus, it does not appear possible to provide this information without contacting all reporting individuals and asking them to provide it.

An alternative approach would be to identify the DOD offices in which these individuals worked during their last several years of Government service and, by review of files and interview of current workers, try to make this determination. We respectfully submit that neither approach would be a prudent investment of DOD resources.

We acknowledge that the information requested by Senator Levin is important to identify areas of possible abuse. It will be required in the future. If the requirement is not imposed by the statutory amendment now under consideration by this Committee it will be made a regulatory requirement pursuant to the authority of the Secretary of Defense.

We also are unable to provide any count of the number of recusal statements filed by departing personnel. Although persons negotiating for employment must cease all official dealings with any firms with which they are holding employment talks, there has been no formal reporting procedure established. Thus, in some cases recusals may be oral. More often they will be written but are not counted or kept in a permanent file. This also will be corrected by the Committee's legislative proposal. Under it the filing, review, and approval of recusals will be required.

Senator LEVIN. The next question pertains to the form, too. Look at the form. We never ask the person whether or not the firm with whom they are going to work is one with whom they had significant dealings.

Would you agree with that?

Mr. TAFT. I would agree that the form does not ask that. I would agree it is probably a good idea if the form did ask that.

Senator LEVIN. I would like you to analyze for us, take a look at these 2,200 cases and tell us in what percentage did the person go to work with a firm with whom they had significant dealings and tell us whether, in your opinion, it is not absolutely clear that there were discussions going on with the company.

You have a letter saying they are going to recuse themselves. You have people, presumably if they are recusing themselves, they are recusing themselves while on the job. It is their job to negotiate with these firms.

What are they doing the last few months if they recuse themselves?

Mr. TAFT. I would say that the forms I have received, and I am sure it is fairly typical, come from people who are dealing with perhaps 20 or 30 companies and what they state is that they will not have any dealings with one of those companies and that their deputy will handle all matters and it will not be brought to their attention at all.

It is a straight refusal as to one particular company and it works, I should say, very well. I have no reason to think that it doesn't or even that the superior will take it.

The Deputy Secretary in the past when he had an employment offer from somebody routinely, even if he knew he was going to reject it, had rejected it, said he would not work on that and referred the matter to the Secretary.

Senator LEVIN. My time is up. I will leave you with this request.

When you make a survey of the 2,200 forms filed with you, will you indicate not only in which of those did people go to work with a firm with whom they had significant dealings in the last 2 years of their employment, but would you also indicate in which of those you got a recusal letter?

Mr. TAFT. Yes, indeed we will.

Senator LEVIN. Thank you.

Senator QUAYLE. Senator Dixon.

Senator DIXON. Thank you, Mr. Chairman.

I wonder if you can enlighten me, please, Mr. Taft. Your statement is a very good one and I have looked at it carefully.

What precise section of the existing code deals with the subject matter of Government personnel who work in these areas and then go into employment with the individuals that they have dealt with?

Mr. TAFT. Section 207 of title 18 deals with the restrictions on people who have left Government.

Senator DIXON. It deals with that on the basis of those who leave the Government and then are representative of individuals with the Government?

Mr. TAFT. That is right.

Senator DIXON. My reading of it as a lawyer, and I want you to understand I am visiting this for the first time at today's hearing, that the matter that my distinguished colleague from Michigan is talking about is dealt with in Section 207 of Title 18.

Mr. TAFT. It is perfectly clear it is limited now to representational activity, not simply employment. That is what I was talking about with the Chairman. I think that is an area that you might want to expand.

Senator DIXON. That is what I want to clarify here. As I look at these sections of the code, I don't believe I see in here any criminal prohibition against an employee of the Government going to work for someone that they dealt with as an employee of the government. There are certain bans, and so forth.

Is there any limitation on that or prohibition against that now?

Mr. TAFT. No, there is not and my statement says that quite flatly. Congress has considered this many times, most recently in 1978, and decided that it was not a problem that it felt it should address. This is the question you are revisiting and we are prepared to revisit it with you.

Senator DIXON. I don't mean this in a critical way. It is an informational thing.

Are there any cases at all of any prosecutions under any of these existing sections of the code that are called to our attention?

You very excellently reproduced that on pages 2, 3, 4, 5, and 6. Then you talk about rules and regulations. In the last 4 years have there been any prosecutions at all in the case of the Department of Defense?

Mr. TAFT. I should refer you to the Department of Justice on that. I think we have referred some matters to the Department of Justice from the Department of Defense and they turned out not to be proper subjects for prosecution.

We do investigate and the inspector general of the Department who has this opportunity told me yesterday that they have a fair number of allegations of violations of these statutory provisions on their hotline, on letters, whatever, and they investigate them routinely when they receive them.

I am not aware of any prosecutions or convictions under these particular provisions.

Senator DIXON. I wonder if you would supply to the subcommittee a list of any violations which have occurred in the last 4 years. I am personally aware of none, but that doesn't mean they haven't occurred.

Mr. TAFT. I am in the same position. I will get together with the Department of Justice and get that for you. They, of course, do the prosecution.

I would say, in fact, that prosecution is a good thing if it indicates there are violations. We are not aware that there are violations.

[The information follows:]

Mr. TAFT. I understand that the Department of Justice has provided this information directly to the subcommittee staff.

Senator DIXON. I suppose one has to be very careful about how one crafts legislation in this area, but it occurs at least to me that it is pretty common knowledge on the Hill that a good deal of it exists in relation to the procurement process.

That is, a relationship does exist between those who have been in the military in high office or been procurement officers or a variety of other things who change their positions from governmental service to the private sector dealing with the Government.

It is a kind of ordinary experience for us. We run into it every day.

You would agree with that?

Mr. TAFT. It is not confined to the executive branch, sir.

Senator DIXON. Of course not. I think it is reasonable, incidentally, to make that point. That was the point I was going to address next, the question of how you craft something that prevents those abuses of the public trust that some believe occur out there while at the same time being reasonable in what one does.

It occurs to me that that is the problem when you look at the issues that you have brought to our attention. I see how carefully the Congress dealt with those problems on each occasion in the past when it tried to pass a law.

That occurred to me first and then it occurred to me nothing has been done under existing law.

So, I suppose when we deal with this, we ought to have some suggestions from those who experience a problem about how they think that ought to be crafted.

What would be your suggestion about it?

Mr. TAFT. I think what has been influencing the approach that the Congress has taken in the past, and I think it has been well conceived, is that they wanted to define things that they were quite confident was beyond the pale and then impose very substantial prohibitions.

Those are criminal statutes we are dealing with and in a criminal statute you want to be quite clear that what you are proscribing is very wrong.

Taking that approach, they have been, as you say, carefully crafted to address specific ills that the Congress was persuaded really were serious.

Senator DIXON. If I could interrupt at that point, I agree with you.

My colleague talked about 2,200 cases of people leaving the service and going into private sector employment shortly after that. I suppose one would say that that fact alone you could not make into, in my judgment, some kind of criminal violation; would you not?

Could we say it would be criminal to go into the employment of a contractor?

Mr. TAFT. I think it would be very ill advised.

Senator DIXON. What criteria would be part of it?

That is to say, would you have to show discussions in advance?

Would you have to show some kind of accommodation between the individual and the entity with which he dealt that indicated some kind of quid pro quo?

What would you do?

Mr. TAFT. I think some of the bills that are being submitted and considered and what we ought to look at is whether one could address less substantial, less precisely crafted problems, things that go more to appearance issues than actual conflict, let us say, in a milder way, by civil remedies, by prescription, by other approaches than criminal.

I think the criminal sanction is one that should be reserved for very severe cases.

Senator DIXON. I would tend to agree that I don't think we should make appearance a crime. I suppose every one of those things has some appearance of the possibility of conflict.

Can one say you want to make a criminal statute out of that?

Mr. TAFT. I would not advise it. I would not recommend it.

Senator DIXON. I think the point here is that there is a problem clearly and there are some cases where there may be very obvious cases, if one were to develop it, of activities that are not in the best interests of the Government, maybe advancing the financial gain for an individual from time to time. I think there is no doubt of that.

But how do you set the standards in a statute, that is the point, one that could be drafted to protect the rights of the individual while serving the interests of the Government?

I would be interested in hearing from Justice and yourself in the Department of Defense and others as to what they think those standards ought to be because if there is a problem out there, and I suspect there is one, my colleague has suggested certain cases that would concern me, at the same time, I would hope we would be very, very careful to not just respond to public concern with something less than the appropriate kind of standards in a criminal statute.

Mr. TAFT. We are prepared to work with the subcommittee. I think anything that will enhance the public confidence in the integrity of our Department and the way we do business is very desirable and we should try to do everything we can to do that.

Senator DIXON. Thank you.

Senator QUAYLE. Thank you very much.

Senator LEVIN. Mr. Chairman, could you yield for one moment?

Senator Dixon raised a point which I want to make sure is clear on the 2,200 figure. That is the number of people who went to work with a defense contractor.

He is going to submit for the record in what percentage of those cases they went to work for a contractor with whom they had dealings.

Senator DIXON. You are not suggesting 2,200 people have gone to work for contractors who worked in a capacity with the Government dealing with those contractors? You are not saying that?

Senator LEVIN. That is right. He is going to submit for the record in what percentage of the 2,200 cases did that happen. He doesn't have that figure with him.

Senator DIXON. I appreciate that clarification very much and I thank you for doing that.

Senator QUAYLE. I think what you are asking for and what the Secretary wants to supply is of those cases, how many went to work for a contractor that had significant involvement on a particular contract of that contractor, out of the 2,200.

Furthermore, I think it might be more interesting to see, of those numbers, once you get a handle on that, how many of those people who went to work for that contractor then did work for that contractor on the contract he or she had oversight on.

I think you will find the number dwindled even further.

Senator DIXON. Could I clarify something?

Working on a contract after you have gone to work with that contractor if you deal with the Government is not now a crime, is it, as I read these statutes?

Mr. TAFT. Unless you come back and represent the contractor before the Government.

Senator DIXON. The fact of working on it after you leave the contractor, if you don't come back to the Government representing that contractor, as I read these statutes, is not a crime?

Mr. TAFT. I read them that way, myself.

Senator QUAYLE. I was asking about the post-Government activity if in fact the scope of prohibition should in fact be expanded to

having any involvement on that particular contract on which they had substantial input and substantial decisionmaking authority.

That is the case which the Secretary did not have, but from his point of view, it is very, very few.

We will find out from other witnesses what the general impression is.

Mr. TAFT. I would think, Mr. Chairman, that the discussion here shows that we share a sense of priority as to which problems are more severe and which problems are less severe and I would hope that we can work with the committee on the basis of those priorities. I think we have identified them correctly.

Senator LEVIN. Mr. Chairman, the next point which is significant in terms of that exchange, is that the form which is filed, pursuant to law, of the 2,200 people, does not tell you whether or not that person had dealings with the contractor with whom he went to work. It does not ask you.

That is a flaw, both in the law and the form. You can't tell by looking at these 2,200 forms. We have gone through these matters.

Mr. TAFT. Since it is not a matter under the law, that may explain why we did not ask it.

Senator LEVIN. It does matter with the law if they negotiate a job with that.

Mr. TAFT. If they worked on the matter, as the Senator from Illinois was saying, then went to work on the matter, it would not be a violation.

Senator LEVIN. You would agree it matters whether or not you went to work with somebody with whom you dealt as a Federal employee because you might have negotiated with that person for a job while you were working and that is illegal?

It is critical we find out whether or not the person for whom you went to work is a person you dealt with as a Federal employee.

We don't have that information. Hopefully, you will be able to supply it on the analysis of the 2,200 cases that you are going to submit for us.

Mr. Chairman, the additional questions I have I would like to submit for the record.

Senator QUAYLE. Those questions will be submitted to the Secretary.

Senator DIXON. May I submit some for the record, too, Mr. Chairman?

Senator QUAYLE. We will be glad to have the Secretary respond to those.

Thank you very much, Mr. Secretary.

Mr. TAFT. Thank you, Mr. Chairman. I look forward to hearing from you whenever you have need of our services.

Senator QUAYLE. Thank you very much.

The second witness is the chairman and chief executive officer of Martin Marietta Corp., Mr. Pownall.

Mr. Pownall, welcome back to the subcommittee. We have appreciated your testimony in the past. We are looking forward to your testimony today.

You may proceed as you wish.

STATEMENT OF THOMAS G. POWNALL, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, MARTIN MARIETTA CORP.

Mr. POWNALL. I will be pleased if you would insert my statement in the record and I thank you very much for allowing me to appear before this subcommittee.

The topic that you have under consideration today is commonly referred to as the "revolving door" matter. As I understand this issue, there are three separate categories of persons whose actions cause concern.

One relates to the individual in the private sector who goes into Government at the executive level and later returns to a position in the private sector.

Another pertains to the military or civilian executive who is employed by an industry firm after retirement.

And the third relates to the young man or woman who leaves Government service before retirement for one reason or another and is subsequently employed by an industry firm.

There is a view that a process that permits individuals to obtain employment in private sector firms following Government service promotes improprieties.

I am pleased to have an opportunity to testify because I hold strong views on this matter. Quite simply, I am disturbed at allegations of dishonesty that are being made against a group of this Nation's most able and outstanding citizens.

I also am concerned about the effects on our Nation's capabilities if the Congress decides to take strong and poorly conceived action to change a process that has served our Government well.

In addition, I want to avail myself of the opportunity that you are affording me to recommend solutions to the problem.

First I will comment on the basic issues, honesty and integrity, that underlie this matter.

My experience with the Government procurement matters covers a period of 30 years during which time I have known and worked with many persons with private sector experience who have assumed responsible positions in Government.

I have known also many persons who worked for industry after having worked for the Government. I have found these people almost without exception to be honest, forthright and highly competent citizens who as a group possess qualities and qualifications that our nation needs. Their individual contributions to our nation exceed the contributions of the average citizen.

I do not make this point to imply that society owes them any special favors, but to establish the fact that the revolving door issue relates to a group of people that as a whole are among the finest in our country. Their services while in Government are for the most part extremely important, and frequently their services after leaving Government are of great value to the Nation.

I believe it to be most unfortunate and grossly unfair to imply, as has been done, that people who once worked for the Government and now are working in industry have taken advantage of their position or special knowledge gained in Government to achieve improper personal gains.

In my experience I have known none who have participated illegally, illicitly, immorally or unethically in that regard. Allegations of improprieties on a widespread basis in this area are not only incorrect, but they also constitute a threat to a system that has served our Nation well.

Rather than taking actions and making public statements against a system that utilizes skilled people in both Government and industry, we should be taking positive action designed to encourage our best and most able citizens to take jobs in Government and not provide penalties when they return to industry.

Attracting executives to serve in the Government—as already noted, I have known, personally, a number of very outstanding managerial and technical people who, with excellent private sector experience, have taken positions of responsibility in the Government. Some of these men and women are currently working in the Government. I admire and respect them highly, but it is becoming more difficult for them to make the transition.

Conflict of interest rules now in effect, detailed and sometimes irrelevant background investigations, confirmation hearings with strong political overtones, and significant personal economic losses along with the normal frustrations of Government service are gradually depriving us of the managerial talent that our country needs.

We cannot as a Nation afford these reductions of capabilities. It is my view that an increase in ethics rules or even a continuation of the rules and practices now in effect will have a more serious impact on the economy and efficiency of our Government than will the transgressions of a few who may take advantage of their positions.

I encourage this subcommittee to consider this problem when addressing the revolving door issue. I implore you to establish rules designed to reduce actual or apparent conflicts of interest while eliminating some of the onerous provisions that have been introduced into our system.

We must make it easier, not more difficult, for people to enter Government service and return to the private sector. The simple fact of the matter is that some of the proposed solutions to the "revolving door" will further aggravate that problem.

The military/civilian executive dilemma—Although I am concerned about the problem of attracting good people into high level executive positions in Government, I find myself more disturbed, personally, by allegations of improprieties on the part of military and civilian executives who work for industry after they retire from Government.

As I told the Senate's Task Force on Selected Defense Procurement Matters last January 30, our defense military and civilian executives "are highly intelligent, well educated, extremely dedicated and very competent. It is not possible to find a more ethical or capable group of people in America today."

It is difficult for me to understand, sir, speaking parenthetically, how one or thousands of people in whom we have invested our faith, trust and confidence while they have been in the public service serving the U.S. Government in and out of uniform become

turncoats the minute they leave and are willing to sacrifice their soul, their image, and their integrity for a fast buck.

Many military and civilian retirees possess skills that constitute a valuable national resource. It is natural for them to want to apply these skills in a meaningful and productive way; and it is in the Nation's best interest for industry firms to advance those technologies that the Government needs with the assistance of this resource.

There are some simple rules employed in my company that, in my judgment, preclude conflicts of interest.

First, we do not contact any Government employee for employment unless he already has left Government service or has announced his intention to leave. In fact, it is our policy to encourage people to stay in Government.

Next, we review with the employee before hiring him or her the possibility of conflicts of interest, and our general counsel makes an independent third-party evaluation of executive level new hires for potential conflicts.

And last, we instruct our executives who have come to us from Government to avoid actual conflicts and appearances of conflicts by turning over to other persons any duty that may cause a conflict of interest.

Mr. Chairman, the evidence is overwhelming in favor of a logical transition of skills and special abilities from our armed services to the private sector. On every score that I can think of—talents, need, value, and ethics—it just makes sense to permit this transfer of personnel resources.

I urge the members of your subcommittee and Congress to weigh carefully restrictions placed on this group of people and not deprive our Nation of the use of talent that it needs.

RECOMMENDATIONS

I fully appreciate the problem that you and this subcommittee face. There are allegations of improprieties, which I have difficulty in accepting, but the allegations whether true or not constitute a threat to the integrity of the Federal procurement system if the public at large believes they are true.

You are primarily interested, in my judgment, in a strong procurement system and may feel compelled to take action that is designed to add to the public's confidence that the system is honest.

Accordingly, I would expect that you will want to develop logical restrictions that you believe will provide that confidence.

I have great difficulty with S. 490. It goes beyond that which is desirable to meet the problem that we face for either the actual conflict issue or the requirement to take logical appropriate action.

I believe that Senator Proxmire has introduced legislation that is more nearly on target. The salient parts of his bill would:

Provide for a 2-year restriction for Federal employees from joining those firms with whose contracts they were personally and substantially involved during the last 3 years they worked for the Government.

I do not agree, however, with his plan for implementing these rather straightforward restrictions. The bill, which is S. 385, not

only establishes policy, but also prescribes the details of its enforcement.

If the Congress passes the bill as written, it will set up another enforcement activity empowered to control the actions of other people in and out of the Government.

I do not wish to imply that Congress should enact legislation with no means of enforcement, but there are already in existence several administrative activities that can effectively handle this requirement.

I also believe that there is a self-policing aspect of these restrictions that should not be overlooked. It is my view that we have gone too far already in establishing special regulatory, oversight, and control groups that do not have operational responsibilities for end products or services that our Government requires.

I further recommend that this subcommittee look beyond restrictions and see what can be done in a positive sense to:

Make Government service more attractive for those persons needed for complex and technically oriented business management functions.

And provide for better management of long-term careers for military and civilian executives in the acquisition process.

I would be pleased to assist you in any way possible in such an endeavor.

Thank you for permitting me to speak on the "revolving door" matter today.

I would be pleased to answer any questions that you have.

Thank you very much.

Senator QUAYLE. Thank you very much, Mr. Pownall.

I can assure you that we are still pursuing with a great deal of vigor ways to encourage long-term careers for military and civilian executives in the acquisition process. That is something that we have talked about. I can assure you that the subcommittee is, in fact, pursuing it.

On your first suggestion that we look beyond the restrictions, are there any specific suggestions that you think we could make in order to make Government service more attractive for people on the outside?

I agree that we would get a lot of value by having people from the private sector come in and make certain contributions to public service and then leaving and going back to the private sector. I don't want to set up any kind of impediment that will be unreasonable.

We will have to be careful about conflict of interest and things of that sort, obviously.

Do you have any specific ideas about how we might do something to encourage people to pursue Government service?

Mr. POWNALL. Mr. Chairman, I don't see a long line forming at the moment to take Government service. Maybe it is a matter of perception.

We see so much in the print today about confirmation hearings that last indefinitely. I do know from people that I have known well, even worked for Martin Marietta, who entered Government service, that there is great travail that travels with that service.

The perception is that upon leaving Government service after several years he may not be permitted to return to the industry even in which he may have worked if, indeed, he had broad responsibilities dealing with procurement activities.

As I interpret many of the things I have heard or read about the law that is being proposed, procurement activity includes a raft of activities. It is not just a matter of signing contracts or negotiating a contract. It is a matter of selecting the contractor, and there are hundreds, even thousands, of people involved in that selection process.

So that we are really literally talking thousands and thousands of people when talking about the procurement process. It is not just confined to some very straightforward, easily defined, almost clerical activities, it is a very substantial group of people in the Government.

I think many people feel that return to private industry following service in the Government is becoming increasingly difficult. I don't think anyone would deny the President the opportunity to serve if somebody comes along and the President asks him to serve, in my opinion, almost regardless, but he had better not have any spooks in his closet.

He has to be prepared to say I have been an Eagle Scout all of my life. Otherwise, he will never pass the muster. There can be almost nothing, no blemish on his character or reputation, otherwise, he is unwilling to come in.

People worry about this kind of thing, there may be a lot of people, I may be one of those, who would find it difficult to submit myself to the jurisdiction of this body and come out whole, even though I may have talent sufficient to do the job if I were employed.

Senator QUAYLE. What you are saying, in other words, is some of the public scrutiny during the confirmation process is perhaps more of an impediment to getting good people than any of the post-Government restrictions that are presently on the books?

Mr. POWNALL. I think the process is brutal, personally. But I have not been through the process. I have too many blemishes to submit myself to that, sir.

I do believe that returning to industry, and this is very significant for younger people, somebody in the 30- to 50-age bracket whose talent may be enormous and who have not yet reached the point where personal wealth has become an impediment to service and who are not only willing to serve, but are anxious to serve, I think if we confine them to returning to some walk of life they have never known before after they get out of Government service, it is unlikely that they would accept.

Senator QUAYLE. Let me ask you the same question I asked Secretary Taft on this idea of where an individual in Government that has substantial involvement in a particular contract, then would go to work for that contractor. Presently they are precluded from coming back to the Government as negotiator or representative on that contract.

As a corporate policy if you hire somebody that dealt with and had a lot of involvement on a particular contract, they left and the contract was still going on, even though they may not come back

and formally represent you to the Government, are they involved in this particular contract in such cases or do you have a corporate policy that would even preclude them from significant involvement in that particular contract?

I am trying to get the scope of prohibition, where it should or should not be, to get at this appearance problem that apparently we have.

Mr. POWNALL. Let's imagine for a moment, sir, and it is quite likely that it has happened, that a civilian or a military person, man or woman, has technical expertise in signal processing and we are anxious to get signal processors. We need some now, as a matter of fact.

We would be remiss if we were to say to ourselves or to them, you can come to work for us, but in no instance can you work on a project that uses any signal processing that you might have had some association with while you were in Government service.

We would not permit that person to negotiate with the Government in any sense of the word. We would permit that person to deal technically on matters of pure technical issues with people in the Government service.

But insofar as influencing contract decisions or negotiating is concerned, absolutely not.

Senator QUAYLE. I think there is a clear line of demarcation here from people who go to work on a technical basis and provide you with technical expertise, because I think, whether they come out of Government engineering or not, if you have a project with problems and you get the technical advice you need, that might mean the project would be better off and it would cost the taxpayer less and be a more effective contract.

I am not concerned about that part of it. I think it is a little bit different.

What interests me is the program manager or maybe the contracting officer or maybe even at the assistant secretary level that had a substantial decision-making role, the awarding of the contract, the negotiation of what that contract would be, and then would go to work for that contractor and then perhaps be involved in giving advice on how you are going to continue to negotiate.

I am talking about negotiating policy with the Government. I think what you are telling me is in your corporation you have a little bit of a line that you draw yourself on how these people are going to interact with a contract they have had substantial involvement with while serving in the Government.

Mr. POWNALL. That is correct, sir, but I would like to elaborate for a moment to say that the people we employ have had a record of being ethical, moral, decent, God fearing, serving people before we got them. If they weren't that, we wouldn't want them.

We don't get people who don't put country before almost everything else. We don't expect them to be turncoats the minute we get them. I don't think you could buy them to do the kinds of things that somehow some people want to suggest. I don't think that is realistic.

In a big barrel of apples, there may be a rotten one somewhere. In this case it is not true that one rotten apple spoils the barrel.

I doubt seriously that if each person is in active duty who left the service in the last 4 years were professionally interrogated, that you would come away with a sorry picture. I find it very difficult to believe. I find no more honorable group of people anyplace in the world, and I have a very narrow perspective about this, than those that serve us in the U.S. Government here and elsewhere.

They are first-class people, by and large, who are doing an outstanding job for us. They don't turn in their uniform and turn into some monster whose only interest is earning enough money in the next 10 years to make up for the losses that he thinks he had in the first 20.

Senator QUAYLE. I don't dispute the morals, the integrity and the value that most and perhaps all of these people possess. I certainly don't question individual companies.

I also point out that laws aren't directed toward the honest, the moral and the ones that are going to live up to the ethical standards that we expect from good solid American citizens. The military is a great example of that.

What the law is directed to and tries to forego is any of the tendencies that would be there and would be wrong and would not be terribly high ethical standards.

That is, my desire is to look at this issue in an objective way, not an emotional way.

Mr. POWNALL. It is repugnant to those who are in service to find one who has recently left returning to feast at the trough. I think that those who represent the Government in a civilian or military capacity would find that very distasteful and would be very likely to raise a big red flag almost instantly.

I am not saying that it never happened or it never will or it is not happening right now. I would suspect that the instances of it, I hope, are de minimis.

Senator QUAYLE. I think that they are.

Senator Levin?

Senator LEVIN. Mr. Chairman, first let me agree with our witness about the morals and ethics of people in Government in this particular area and others. We have conflict of interest laws and prohibition against negotiating contracts for yourself with private employers anyway.

It is to try to catch that occasional person who violates ethical and moral standards.

I happen to agree with our witness that we are dealing generally with an ethical group of people. We want to try to make sure that temptation is not placed in their way needlessly.

We also want to make sure that there is an appearance that fits the ethical standards that you and all of us believe in.

I was very much intrigued with your recommendations, I must tell you. They are very close to where I am at. Let me go through them with you.

You have great difficulty with S. 490 "because it goes beyond that which is desirable"—I am reading your testimony—"to meet the problem that we face for either actual conflict issue or the requirement to take logical appropriate action."

I happen to agree with you. I have problems with S. 490, too.

Then you say that you believe Senator Proxmire introduced legislation that is more nearly on target and you quote the salient part of this bill which provides "for a 2-year restriction for Federal employees from joining those firms with whose contracts they were personally and substantially involved during the last 3 years they worked for the Government."

I happen to agree with you that his legislation is more nearly on target and that provision is a key part of this legislation.

Then you say you do not agree, however, with his plan for implementing these rather straightforward restrictions and you indicate that his bill sets up another enforcement activity empowered to control the actions of other people in and out of Government.

You have a problem with setting up another enforcement activity. I happen to agree with you on that one; sc do I.

The difference between the bill I am introducing today and Senator Proxmire's bill is precisely that. My bill does not set up another enforcement agency. It avoids the bureaucracy but keeps that 3-year employment, 2-year restriction of Federal employees from joining a firm with whose contract they were substantially and personally involved.

Your feeling is we ought to do something about an issue, but we don't want to create an overlapping bureaucracy and we don't want to go back five years into a person's life. Not having anything to do with a company for 5 years, I believe is a balance which I would choose.

Let me ask you about the negotiation question which troubles me a great deal obviously. We know that many, many people go to work for companies with whom they have had substantial involvement. There ought to be some limit on that in terms of the number of years that it has been since they have had that involvement. That is the key to the Proxmire bill.

The way the present law is written you cannot negotiate an employment arrangement for yourself with a company with whom you had a substantial connection as a Federal employee. You can't be dealing with your company and negotiating with your company for a job for yourself at the same time.

I think you would agree with that?

Mr. POWNALL. Certainly, yes. If I understand your question correctly, Senator Levin, it is if we were in the process or in prospect of a negotiation with an individual or group of individuals, we should not at the same time be discussing with them the prospect of joining us in some employment fashion; is that correct?

Senator LEVIN. Yes.

You would also agree that if somebody is in supervisory authority over the quality of your product, that they should not be negotiating with you for a contract at the same time they are negotiating for a job for themselves?

Mr. POWNALL. Yes, I think that would be reasonable.

Senator LEVIN. Would you draw any distinction between negotiating with a private company and discussing employment with a private company?

Mr. POWNALL. I certainly would.

Senator LEVIN. You would draw that distinction?

Mr. POWNALL. I certainly would. I personally have hired a number of very talented, capable people who served in the Government in one form or another in many agencies, not necessarily defense.

Senator LEVIN. My question was not clear. Let us assume I am supervising you in the quality control of your work. You would agree that I should not be negotiating with you for a job at the same time?

Mr. POWNALL. I wouldn't negotiate with you.

Senator LEVIN. And I should not negotiate with you?

Mr. POWNALL. I would not negotiate.

Senator LEVIN. You should not negotiate with me and I should not negotiate with you?

Mr. POWNALL. You might try, but I wouldn't.

Senator LEVIN. I wouldn't try and I know you wouldn't.

Do you draw a distinction between negotiation in that circumstance and discussions?

Mr. POWNALL. If discussion is the following:

I have known of people who were alleged to be contemplating leaving Government service. I have had this kind of discussion: Is it true that you either turned in your chit or you are giving it serious thought?

The answer can be I either have turned it in or I am giving it serious thought or I am not.

I say to him, if you are giving it serious thought, once you have done it and you are interested in the prospect of employment with Martin Marietta, let us know.

You know, you win a few and you lose a few. Sometimes they go to work for somebody else. Sometimes they change their minds and go off into the hotel business.

Senator LEVIN. If the person responded to that inquiry of yours by saying I might be interested later on, that is the end of the discussion?

Mr. POWNALL. That is the end of the discussion.

Senator LEVIN. You would not consider that negotiations?

Mr. POWNALL. I would not.

Senator LEVIN. You don't see any problem in that person continuing to be in charge of quality control for the Government at Martin Marietta?

Mr. POWNALL. No, I do not.

Senator LEVIN. On that one I might have a little difference with you.

Mr. POWNALL. Senator Levin, the people we want are the people who have represented the Government in the strongest, most forceful possible fashion. They are not the weak-kneed nobodies. We all have some of them in industry as well as in Government. They are the ones we don't need.

We need good people. We don't need people who are embezzlers because they embezzle in our system as well as they would embezzle in the Government system. Even if they were expert embezzlers, we wouldn't need them.

Senator LEVIN. I understand your perspective. I would have the same perspective in your position.

The perspective I am concerned about is the Federal employee perspective, the one who has had discussions which you would call something short of negotiations with the employer for a job for himself or herself who then continues to be in a position, during and after those discussions, of supervising something like contract negotiations or quality control.

I understand your perspective and I, frankly, admire it in terms of what your company is interested in. I think I would have the same perspective.

My perspective is somebody who worries about employees, what psychology they act under and the appearance, I think a situation you obviously feel also is a problem, or else you would not be saying that you think we should be taking action such as the Proxmire bill. It is a different perspective.

Mr. POWNALL. It is a two-way street, sir. The person that we are seeking has infinite opportunity, it is not only that he come to work for Martin Marietta. He or she can go to work for a wide range of companies across the whole country, not only in defense, or a lot of the places.

These are very talented people. They are not desperate for jobs. By and large, they are in the employment market a very, very short period of time. They would have no more interest in coming to work for us if they thought it would be unethical than we would have them come to work for us if we thought it was unethical.

It is a world, in my view, of trust. If I were a policeman, I would have to believe everybody was a potential bank robber because I don't know who is and who is not. But in business in the normal conduct of commerce we have to be able to believe that most of the people that we are dealing with are essential human beings.

Senator LEVIN. If not, 99 percent are, even many who we would say don't reach that standard also feel they are. Most of us want to be ethical people, we want to deal with ethical people. That does not mean on an objective level most of us live up to that standard.

I agree with you most of the people you deal with or hire probably all are ethical people and feel they are ethical people. That does not mean by some objective standard of ethics that they have lived up to that standard that you and I would accept even though we always live up to it by objective standards. By the appearance standard, I think it is clear we have problems as well.

Your testimony I think is extremely helpful in many regards. I just want to add my thanks to you for coming forward and being so blunt and forthright about what you are saying.

Mr. POWNALL. Thank you, sir.

If I may be permitted one further comment, I worry about this appearance problem because I am aware of that on a regular daily basis. It is not exactly like speeding. You can appear to be going faster than you are. But if a cop has the radar on you, he will find you.

In this business it is not a matter of trailing a guy with a radar. The fact that we have hired someone who formerly in another position in the Government had some instant responsibility for the conduct of our business does not to me suggest, nor should it suggest to anyone else, in my opinion, that his employment with us should be suspect.

I see absolutely nothing wrong with that. It depends on how you use them.

Senator LEVIN. Just to conclude, I have a lot of trouble with somebody discussing with a potential employer a job while he has supervisory responsibility for quality control over that future employer's product. I think it is an obvious temptation; I think it looks bad, and I think most of us would agree that when we adopted a law that says you can't negotiate for future employment for yourself when you have substantial connections with a firm when you are a Federal employee, that we would have included discussions about a job as well as negotiations about a job.

At least I think so. I may be wrong. Maybe that distinction was very conscious in the Congress. The courts have interpreted negotiation to be something very formal and very rigid because of the criminal statute. I think the courts probably are correct in terms of negotiation.

By that assessment, I, as one Senator, have a problem when we have people discussing their own job prospects with contractors over whom they have substantial authority and jurisdiction where they are supposed to be exercising control on behalf of the taxpayer.

I have real problems with that. That is the heart of the Proxmire bill to eliminate that by saying you can't go to work for that guy for 2 years after you have had a substantial role with him. That is what it says.

My bill would avoid the bureaucracy to implement it.

Mr. POWNALL. I would like to say, sir, that I hope I am not misinterpreted. Between the two bills, I think the Proxmire bill is probably closer to the mark. I am not encouraging legislation. I am sure if I wrote some, it would be neither of those.

I find it difficult to imagine how one who deals with a matter of quality, even if he has indicated to a potential employer he would be available, the guy whose quality he is overseeing at the moment, once he has had that initial conversation, there has been no contact, no employment, there has been no nothing, that very next element that he certifies is going to have less quality in it than the last previous one that he did.

Our intent is not to deliver bad quality out the back door, to start with. He is not going to certify something whose malfunction would cause accidents or death or inability on the part——

Senator QUAYLE. That is not the intention, of course, nor would it be the intention of somebody to negotiate modification of the contract.

Mr. POWNALL. Probably he would be tougher than he was previously.

Senator LEVIN. Maybe, but it would not be the intention of somebody who negotiates the contract with you either to intentionally say, hey, I may have a job with that guy, I have talked to him about it and, therefore, I am going to go a little easier with him on modification of the contract.

I don't want to put people in that position. I don't want the guy who is sitting down negotiating with you on a contract modification to have had a discussion for a job with you. I think it creates a

temptation that is bad, a psychology that is bad, and an appearance which is bad.

That is not, I am saying, the one I want representing me negotiating with the defense contractor or whoever he is. That is not the guy I want negotiating for me. The guy subconsciously or psychologically is thinking, I may go to work with that guy, I have had a conversation with the guy.

It is that simple an issue in a way.

Mr. POWNALL. In every instance I know of, the person steps aside, as Secretary Taft said, that is the remedy.

Senator LEVIN. Thank you.

Senator QUAYLE. Senator Bingaman?

Senator BINGAMAN. When you say on page 8 of your testimony in discussing Senator Proxmire's bill, "I do not wish to imply that Congress should enact legislation with no means of enforcement, but there are already in existence several administrative activities that can effectively handle this requirement," is there any way to be more specific?

Mr. POWNALL. I can give you an example of what I had in mind. I can't guarantee that this is the best answer, but it is the answer I have at the moment.

Let us assume that the person's last duty assignment was in the administrative control of the Army Materiel Command. That command has a vast ability to follow those people. I certainly don't think we need to have a new official office to learn how to keep track of somebody who has left the Service and has gone to work for some contractor.

I find several other things that boggle the mind. You have to report it to the Federal Register. You have to give name, rank, serial number, where they work, how much they had done, how much you are going to pay the guy, what his job description is.

He comes to work for you and one month later he has a new job, new salary, new assignment and new location. It is specious to think that the system can keep up with a few hundred thousand people and for how long.

Senator BINGAMAN. What about the nature of the penalty that should be available when someone violates this 2-year prohibition? Do you disagree with Senator Proxmire there as well?

He proposes that it would be a crime, as I understand it, and that you have a fine of not more than $25,000 and imprisonment of not more than a year.

What is your position as to what ought to happen when someone violates this thing and actually goes to work for someone within the 2-year period that they are supposed to avoid that employment?

Mr. POWNALL. Well, sir, in a civil court it would probably be 25,000 years before they ever would approve anything. These guys that wear uniforms come out of the only system of justice that is worth a nickle right now and that is the Uniform Code of Military Justice.

They have been treated harshly and they have been accustomed to that. The rest of us civilians are accustomed to fighting the cases forever.

I just believe that we are introducing a very serious question of ethical behavior that I find unnecessary. The fact is I don't think you would ever take a case to court.

Senator BINGAMAN. Do you have an alternative suggestion for what the penalty should be?

Mr. POWNALL. If it were I, sir, who was being employed coming out of the Service, I wouldn't care what the penalty was because I would never have an idea I would become subject to it.

If we get to the appearance state, all we are talking about is appearance and if we are going to be dragging people into court for appearance purposes, then we have a terribly severe problem on our hands.

I know a couple of daisies right now where we are alleged to have hired people who had immediate supervision over our company a couple years ago whom we hired. They were Air Force officers, one of whom is working on a contract for the FAA. They are both in Denver.

The second one is off doing some job in Orlando, FL, having nothing to do with Air Force contracts at all. But the appearance of that case is that we hired two people who had been in the Air Force's plant representative's office for some period of time before they came to work for us. They were going to get out anyway. They did get out.

We employed them, which is quite natural. We probably had the first shot at them because they were already there. I am grateful to them for coming to work for us. On the surface of it, it looks a little ragged. If you look at it again, you will find there is no problem at all.

I don't know what it would cost you to find it out if I had not told you, but a lot.

Senator BINGAMAN. I am just wondering how we in the Congress, who don't have access to the details of each case, can write a statute that will dissuade people from getting into situations that involve the appearance of impropriety.

Senator Proxmire has made one recommendation and Senator Levin has another. We have another also pending.

Do you have an idea of what penalty could be attached if someone goes ahead and goes to work for someone within 2 years when they have previously had a substantial involvement?

Mr. POWNALL. I hesitate to tell you that I have an idea about that. The whole thing is so repugnant to me anyway that it is really tough for me to deal with that emotionally.

I am of the absolute belief that we are killing a dead horse.

Senator BINGAMAN. You don't think that there is a problem that needs to be addressed?

Mr. POWNALL. I do not believe that there is a problem that needs to be addressed. If there is one, it is because of oversight. There are certain restrictions, very severe restrictions now.

If one is forbidden forever, if he is retired, to go back to influence work in a branch of the service from which he has retired in any case, and the other thing is forever he can be recalled to active duty at any time. Most Americans can't but all these retired Americans can.

They have two battleships being run by retired people who were called back to duty because they thought they had a lot of talent. They said, fine, we would like to come back and help you out for a couple of years.

I am just wondering here. I just believe that we are trying to kill off a system that works and works well. I would like to find the first case where it is evident that we have had a conflict so extreme that it caused damage to the system and we would get rid of the person who permitted it and the guy who created it.

I believe that very, very strongly. I am sorry.

Senator BINGAMAN. Let me ask on a slightly different issue and then I will quit here.

You suggest in your recommendations, the second one, provide for better management of long-term careers for military and civilian executives in the acquisition process.

Mr. POWNALL. Yes.

Senator BINGAMAN. Some people believe that the major obstacle to long-term careers for military and civilian executives in the acquisition process is the retirement system.

Would you agree with that or not, that that is a major obstacle to our maintaining these people in positions of long-term careers?

Mr. POWNALL. The retirement system?

Senator BINGAMAN. The fact that we permit retirement at a very early age in the military in particular?

Mr. POWNALL. I believe, sir, that the retirement system in the military is a very cost-effective program, that to maintain the people for 20 years in the service at some great personal sacrifice is an extra commitment. I happen to know that the man who serves in the Navy can serve 16 of those 20 years at sea.

You might love the ocean, but 20 years of ocean, you know, flying fish, that is pretty tough. I don't think being compensated for that is extraordinary.

In the second place they come back into civilian life at some early age, 40, 41, 42, 43, 44, 45, and establish a second career, and the best people we have. The more disciplined people we have ever had are those who came out of the military. They know how to get things done. They are hard working, dedicated, loyal, they are just as committed to performing for the Government in this capacity as they were in that and better than most people I know, better than most people that I know.

Senator BINGAMAN. I agree with everything you are saying about the competence and capability of these people. You don't think that the ability to retire at 40 or 41 or 42 interferes with what you refer to here as the long-term career of a military executive in the acquisition process?

Mr. POWNALL. No, sir, because I believe most people who are dedicated to the service for 20 years—it is an up or out system. It is not the Civil Service system, you understand. You either go up or you go out in that system—a lot of people chose to go out because they have been passed once or twice and the handwriting is on the wall.

I believe, I haven't examined this in any great detail, but I believe if we were to do much to inhibit this retirement process that is now in existence, we would find it far from cost effective in the

military. I think we would lose a lot of people and I don't think we can afford to lose them.

We have come a long way, in my opinion, in planning and staffing the Armed Forces. We have them up to about a hundred percent complement. We may have only half as many people as we need, but that is all we are permitted to have.

I think they all look forward to serving and serving well. I think if we fiddle around with that retirement benefit, we are going to screw them up.

Senator BINGAMAN. That is all I have, Mr. Chairman.

Thank you.

Senator QUAYLE. Thank you, Senator Bingaman.

Thank you, Mr. Pownall.

Mr. POWNALL. Thank you, Mr. Chairman.

[The prepared statement of Mr. Thomas G. Pownall follows:]

PREPARED STATEMENT OF THOMAS G. POWNALL, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, MARTIN MARIETTA CORP.

Mr. Chairman and subcommittee members: I am Thomas G. Pownall, chairman and chief executive officer of Martin Marietta Corporation. Thank you for allowing me to appear before this important committee.

The topic that you have under consideration today is commonly referred to as the "revolving door" matter. As I understand this issue, there are three separate categories of persons whose actions cause concern. One relates to the individual in the private sector who goes into Government at the executive level and later returns to a position in the private sector; another pertains to the military or civilian executive who is employed by an industry firm after retirement; and the third relates to the young man or woman who leaves Government service before retirement for one reason or other and is subsequently employed by an industry firm. There is a view that a process that permits individuals to obtain employment in private sector firms following Government service promotes improprieties.

I am pleased to have an opportunity to testify because I hold strong views on this matter. Quite simply, I am disturbed at allegations of dishonesty that are being made against a group of this Nation's most able and outstanding citizens. I also am concerned about the effects on our Nation's capabilities if the Congress decides to take strong and poorly conceived action to change a process that has served our Government well. In addition, I want to avail myself of the opportunity that you are affording me to recommend solutions to the problem.

First I will comment on the basic issues, honesty and integrity, that underlie this matter. My experience with Government procurement matters covers a period of 30 years during which time I have known and worked with many persons with private sector experience who have assumed responsible positions in Government. I have known also many persons who worked for industry after having worked for the Government. I have found these people almost without exception to be honest, forthright and highly competent citizens who as a group possess qualities and qualifications that our Nation needs. Their individual contributions to our Nation exceed the contributions of the average citizen. I do not make this point to imply that society owes them any special favors, but to establish the fact that the revolving door issue relates to a group of people that as a whole are among the finest in our country. Their services while in Government are for the most part extremely important, and frequently their services after leaving Government are of great value to the Nation.

I believe it to be most unfortunate and grossly unfair to imply, as has been done, that people who once worked for the Government and now are working in industry have taken advantage of their position or special knowledge gained in Government to achieve improper personal gains. Allegations of improprieties on a widespread basis in this area are not only incorrect, but they also constitute a threat to a system that has served our Nation well. Rather than taking actions and making public statements against a system that utilizes skilled people in both Government and industry, we should be taking positive action designed to encourage our best and most able citizens to take jobs in Government and not provide penalties when they return to industry.

ATTRACTING EXECUTIVES TO SERVE IN THE GOVERNMENT

As already noted, I have known, personally, a number of very outstanding managerial and technical people who, with excellent private sector experience, have taken positions of responsibility in the Government. Some of these men and women are currently working in the Government. I admire and respect them highly, but it is becoming more difficult for them to make the transition. Conflict of interest rules now in effect, detailed and sometimes irrelevant background investigations, confirmation hearings with strong political overtones, and significant personal economic losses along with the normal frustrations of Government service are gradually depriving us of the managerial talent that our country needs. We cannot as a Nation afford these reductions of capabilities. It is my view that an increase in ethics rules or even a continuation of the rules and practices now in effect will have a more serious impact on the economy and efficiency of our Government than will the transgressions of a few who may take advantage of their positions.

I encourage this committee to consider this problem when addressing the revolving door issue. I implore you to establish rules designed to reduce actual or apparent conflicts of interest while eliminating some of the onerous provisions that have been introduced into our system. We must make it easier—not more difficult—for people to enter Government service and return to the private sector. The simple fact of the matter is that some of the proposed solutions to the "revolving door" will further aggravate that problem.

THE MILITARY/CIVILIAN EXECUTIVE DILEMMA

Although I am concerned about the problem of attracting good people into high level executive positions in Government, I find myself more disturbed, personally, by allegations of improprieties on the part of military and civilian executives who work for industry after they retire from Government. As I told the Senate's "task force on selected defense procurement matters" last January 30, our defense military and civilian executives ". . . . are highly intelligent, well educated, extremely dedicated, and very competent. It is not possible to find a more ethical or capable group of people in America today."

Many military and civilian retirees possess skills that constitute a valuable national resource. It is natural for them to want to apply these skills in a meaningful and productive way; and it is in the Nation's best interest for industry firms to advance those technologies that the Government needs with the assistance of this resource.

There are some simple rules employed in my company that in my judgement preclude conflicts of interest. First, we do not contact any Government employee for employment unless he already has left Government service or has announced his intent to leave. In fact, it is our policy to encourage people to stay in Government. Next, we review with the employee before hiring him or her the possibility of conflicts of interest, and our general counsel makes an independent third party evaluation of executive level new hires for potential conflicts. And last, we instruct our executives who have come to us from Government to avoid actual conflicts and appearances of conflicts by turning over to other persons any duty that may cause a conflict of interest.

Mr. Chairman, the evidence is overwhelming in favor of a logical transition of skills and special abilities from our armed services to the private sector. On every score that I can think of—talents, need, value, and ethics—it just makes sense to permit this transfer of personnel resources. I urge the members of Congress to weigh carefully restrictions placed on this group of people and not deprive our Nation of the use of talent that it needs.

RECOMMENDATIONS

I fully appreciate the problem that you and this subcommittee face. There are allegations of improprieties—which I have difficulty in accepting—but the allegations whether true or not constitute a threat to the integrity of the Federal procurement system if the public at large believes they are true. You are primarily interested, in my judgement, in a strong procurement system and may feel compelled to take action that is designed to add to the public's confidence that the system is honest. Accordingly, I would expect that you will want to develop logical restrictions that you believe will provide that confidence.

I have great difficulty with S. 490. It goes beyond that which is desirable to meet the problem that we face for either the actual conflict issue or the requirement to take logical appropriate action.

I believe that Senator Proxmire has introduced legislation that is more nearly on target. The salient parts of his bill would—

Provide for a 2-year restriction for Federal employees from joining those firms with whose contracts they were personally and substantially involved during the last 3 years they worked for the Government.

I do not agree, however, with his plan for implementing these rather straightforward restrictions. The bill, which is S. 385, not only establishes policy but also prescribes the details of its enforcement. If the Congress passes the bill as written, it will set up another enforcement activity empowered to control the actions of other people in and out of Government. I do not wish to imply that Congress should enact legislation with no means of enforcement, but there are already in existence several administrative activities that can effectively handle this requirement. I also believe that there is a self-policing aspect of these restrictions that should not be overlooked. It is my view that we have gone too far already in establishing special regulatory, oversight, and control groups that do not have operational responsibilities for end products or services that our Government requires.

I further recommend that this committee look beyond restrictions and see what can be done in a positive sense to—

Make Government service more attractive for those persons needed for complex and technically oriented business management functions, and

Provide for better management of long-term careers for military and civilian executives in the acquisition process.

I would be pleased to assist you in any way possible in such an endeavor. Thank you for permitting me to speak on the "revolving door" matter today. I would be pleased to answer any questions that you may have.

Senator QUAYLE. Our next witness is Mr. Gordon Adams. Mr. Adams is the author of "The Politics of Defense Contracting—The Iron Triangle" and is director of the Defense Budget Project associated with the Center on Budget and Policy Priorities.

You may proceed at your pleasure.

STATEMENT OF GORDON ADAMS, DIRECTOR, DEFENSE BUDGET, CENTER ON BUDGET AND POLICY PRIORITIES

Mr. ADAMS. Thank you very much, Mr. Chairman.

I am Gordon Adams, director of the Defense Budget Project which is associated with the nonpartisan Center on Budget and Policy Priorities here in Washington.

I am very happy and very grateful indeed to the subcommittee for having us testify this afternoon. We do a great deal of work on budget and defense issues.

You are dealing here with one of the issues I have dealt with personally in my own work and we have dealt with for some time that concerns our national security.

You have taken some excellent testimony so far. I hope I can keep up the standard which the preceding testimony has maintained.

Thousands of people go through what is called the revolving door every year, particularly people who are in procurement related jobs, who go to jobs with defense contracting companies or other companies in the private sector from the Federal Government.

I have taken a look at some of those problems associated with the revolving door system. In 1977 I had an opportunity to testify before the Banking Committtee in the Senate with respect to legislation that Senator Proxmire then introduced on the subject—I understand he has a bill also now pending—and in 1982, I was the author of a book on the wider issues of the politics of defense contracting, which dealt in fact with the revolving door.

We also keep an eye on the evolution of statutes and reporting in this important area.

I have a statement which I would be delighted to present for the record.

Senator QUAYLE. It will be included in full.

Mr. ADAMS. Thank you very much.

I am going to discuss here briefly several important issues, some of which have been touched on in previous testimony.

I am going to talk a bit about how large the dimensions of this problem are; what is the revolving door problem? I will talk a little bit about some of the weaknesses in current legislation in this area and focus in, if you will, on problems that have been raised already in the hearing this afternoon: problems of temptation, problems of appearances in what I would call the culture of procurement, and say a few words about what I see as a need for new and rather carefully framed legislation to restore credibility to our procurement process.

THE "REVOLVING DOOR" PROBLEM

Let me start this by saying something about the magnitude of the problem, the revolving door problem itself.

The investment part of the defense budget, that part that covers procurement, research and development and military contracting has increased from 37 percent of the defense budget in 1980 to 48 percent in the 1985 defense budget.

Since we are focusing more and more on weapons procurement and research and development and construction contracts, there is a very large volume of business going on between the Defense Department—I will focus here particularly on the Defense Department since you probably have more information in this area than anywhere else—and its contractors.

What that has meant over time is a rather steady stream, in fact, one might say a growing stream, of transfers, if you will, or switches of personnel from one side to the other. It is our view, and I think others will probably agree, that the Defense Department should not be a personnel agency for its contractors. Its job is to provide for our national security.

According to Pentagon data, in 1980 a total of 1,208 people filed reports as having gone through the revolving door in the previous 3 years with contractors; that number had risen to 2,151 by 1983.

Those numbers are a little bit higher than the number I have found in my own work in earlier years. In 1959, 700 people moved to the contractors. Ten years later, Senator Proxmire reported the top 100 contractors had hired over 2,000 former military personnel.

In my study in 1982 the 8 companies I studied had hired 1,672 former Pentagon employees between 1970 and 1979. So, we have a rather long history of evidence of transfers of personnel or a revolving door, if you will.

There is currently growing public attention being focused on the problem. There has been a great deal of press attention devoted to the revolving door, with articles in the Washington Post, Boston Globe, and the Arizona Star, dealing with the Hughes situation described earlier.

In those reportorial accounts of the revolving door alone, one gets past rather quickly, Mr. Taft's single digit count of potential problems.

You can get a large number of potential problems by looking simply at civilian transferees in the eight cases I examined in my book. We looked at 487 cases of civilians who had moved between the Defense Department and the contracting companies I studied. Looking simply at rather inadequate information on their transfer forms we found 24 percent might appear to have been involved in a potential problem of conflict of interest. That represents 119 cases, considerably more than a handful or single digit.

ARE EXISTING STATUTES ADEQUATE?

It has been pointed out that existing statutes cover some of the issues with respect to the revolving door: representational activity, post-employment, in particular. Reports are also required, as Senator Levin noted, from people who have gone through the revolving door.

There are some problems with these statutes which have been well discussed here, problems with focusing on the individual and the individual's responsibility and problems of information and poor reporting.

Senator Levin demonstrated well that it is very difficult to elicit solid information from some of those forms and to arrive at reasonable conclusions. there is a rather woeful lack of serious review and enforcement of these currently on the books and of the reporting requirement, itself.

The biggest problem that we deal with is much larger than the problem of an employee's behavior, once he has left Federal employment and gone to work in the private sector.

The problem has been defined in this hearing and I define it in my testimony as one of *temptation* and one of *appearances* in a subculture that is rich in money and job opportunities.

This problem does not arise after a Federal or military employee leaves office. The problem occurs while he or she is in office. It seem ironic in fact, that we are concerned about an individual's use of influence after he or she has left the Government and pay so little attention to the much greater influence that a current employee could exert—I am not saying they necessarily do so—over the terms and execution of a weapons contract while anticipating employment with the contractor.

That, it seems to me, is the focus of the problem.

TEMPTATIONS AND APPEARANCES

Is there a problem with temptation and is there a problem with appearances?

Mr. Pownall from Martin Marietta suggested he does not really see a problem here. Yet there seems to be. Listen to the testimony of a former Assistant Secretary of Defense, J. Ronald Fox:

> The availability of jobs in industry can have a subtle, but debilitating effect on an officer's performance during his tour of duty in a procurement management assignment. If he takes too strong a hand in controlling contractor activity, he might be damaging his opportunity for a second career following retirement. Positions are offered to officers who have demonstrated their appreciation for industry's particular problems and commitments.

There is more recent evidence in the recent statement by Capt. Jeffrey P. Rohm, assigned to Pratt & Whitney in Florida, who talks about problems of people going to work for contractors and says:

> Unfortunately, the inevitable public perception is that past decisions of these key employees may have been influenced by their prospective employment. Regardless of any actual conflicts, the perception of influence and the susceptibility to improper temptations exist.

Those suggest there are problems of temptation. Is there a problem of appearances?

This is probably the trickiest issue to deal with. Appearances can have a very negative impact on the public's view of the procurement process and upon the view of the procurement process held by personnel who remain in the procurement system after others have left.

I cite, for instance, a trip report from a Government ethics official who describes a visit to one particular installation and says as a result of his conversations with the ethics officer:

> For example, the head of AFPRO office at Northrop on Friday could become the Northrop Vice President for Quality Assurance on Monday and immediately AFPRO employee morale is destroyed. Employees openly discuss what the former employee has done over the past few years for the contractor in order to obtain the new job, and wonder why they themselves should be so ethical. AFPRO employees must deal with their former employee daily on many matters (Government appearing before and seeking data from the contractor) and feel betrayed that the contractor now has all the inside knowledge of how AFPRO operates. Colonel Finder said these types of cases are devastating to the ethics program because of the appearance of conflict of interest alone.

Colonel Finder's summary suggests that there are some real problems. There is continuing evidence that the revolving door creates temptations and problems of appearances for Federal contract officials and can sap the credibility that the public attaches to defense procurement programs.

Contrary to some of the assertions we have heard, and I get the impression from Mr. Taft that the Pentagon position on this may be changing, the revolving door encumbers the steady and efficient management of defense production.

We are spending far too much on defense procurement to continue to run this risk. These temptations and conflicts can diminish the effectiveness of any national security program and conceivably lead to wasteful spending.

ARE NEW LAWS NEEDED?

That suggests that we do indeed need some kind of new legislation. The goal of that legislation, it seems to me, ought to be to remove the problems of temptation and appearance, in order to ensure that we have credibility in the procurement program—there I agree with Mr. Taft—and that we end waste in the Department of Defense.

I have had an opportunity to look at the three bills that have been mentioned here today and have looked at legislation in this area for some time.

It seems to me there are four areas that need to be dealt with because this legislation needs to be very, very carefully drawn.

First, I think it needs to focus on the contracting relationship, employment and activity in and responsibilities in the Government

rather than or in addition to current statutes that deal with employment activity after the individual has left the Government.

Second, I think the statutes need to be reasonable. There are tests in fact of whether statutes are reasonable. I recommend to the subcommittee an excellent study the Congressional Research Service has done on the legality of that concept, published a little more than a month ago in the Congressional Record.

It suggests that there can be restrictions within the law with respect to the companies for whom a person can work and the time period covered.

We are not dealing, in other words, with what Mr. Pownall suggested that the law confines someone to a walk of life they have never known before. It is a rather more limited concept.

Third, any legislation that we are dealing with has to provide adequate information in order to permit the Government to review the cases, permit proper enforcement, and to permit the Congress and the public to make a reasonable estimate of how the law is being upheld.

That needs to be done obviously without the statute being burdensome on either the individual involved or on the Federal agencies involved in the process of review and enforcement.

Finally, it seems to me legislation ought to be careful to provide real deterrence. It needs to involve a real enforcement process and not simply a slap on the wrist. It needs to involve a real penalty for violation of the law.

Now, I have provided in my testimony some analysis or evaluation of the three pieces of legislation with respect to those four standards which we may want to get into more in questions and answers, but I think those four standards are clearly the ones that need to be addressed.

I welcome the fact that the Department of Defense, too, is prepared, as we are, to be of any assistance we can to the subcommittee in helping define those standards.

In sum, the proposed legislation moves the revolving door problem away from the current focus on individual activity and into the culture of procurement. Some more stringent new law is appropriate.

Employment temptations offered by contractors are rampant, headlines detailing stories of appearance of conflicts of interest are rampant. Reasonable legislative solutions exist. They do not unnecessarily burden the individual job seeker or do they prevent the Government from attracting qualified personnel.

We hope as a result of the activity of this subcommittee that conflicts of interest can become an ever diminishing side-show and not the center stage entertainment. I feel this will only happen when conflicts are promptly regulated and I feel they are not so regulated today.

Thank you.

[The prepared statement of Mr. Adams follows:]

PREPARED STATEMENT OF DR. GORDON ADAMS, DIRECTOR, DEFENSE BUDGET POLICY

Good afternoon, Mr. Chairman. I am Dr. Gordon Adams, director of the Defense Budget Project at the Center on Budget and Policy Priorities. I greatly appreciate your invitation to testify before this distinguished committee on the problem of the

"revolving door" through which personnel move between federal agencies procuring goods and services and private sector suppliers of those goods and services.

The movement of Federal personnel is not a new issue, but it is a persistent one. In 1977, I testified on this question before the Senate Committee on Banking, Housing and Urban Affairs, which was considering new legislation. I also wrote a book on Defense Department/industry relations, published in 1982, which, in part, discussed the issues raised by the large number of personnel shifts between eight of our leading defense contractors and the Department of Defense.[1]

In this study, I proposed several avenues to reform the revolving door problem, many of which are under consideration by the Congress today.

In my testimony I will discuss how the issue of the revolving door appears today, the significant and troublesome problems it raises for a sound and credible national security policy, and what legislative remedies might be considered to address these problems.

I will concentrate on the implications of the revolving door for defense procurement, though I recognize that the legislation being proposed this session deals with the issue government-wide. Since the Defense Department buys roughly 75 percent of the goods and services purchased by the federal government and has the only existing reporting requirement for personnel who leave to work with its contractors, Defense Department experience in this matter is likely to be instructive.

THE REVOLVING DOOR

An increasing share of our national defense spending is, today, devoted to the purchase of goods and services in the private sector. Defense "investment" has risen from 37 percent of total national defense spending in fiscal year 1980 to over 48 percent in fiscal year 1985. The private sector is doing a growing volume of business with the Defense Department. As the industry's involvement with the Defense Department grows, the urge to know what is planned and how to influence those plans mounts concurrently. Last November, for example, the Society of Mechanical Engineers held a conference for industry to describe the opportunities available in the Strategic Defense Initiative, which the Society described as a "cornucopia for contractors."

As the defense market has expanded, concern has grown about how the military dollar is being spent. Headlines are increasingly filled with stories about costs, waste and performance problems with our new equipment. News stories have increasingly begun to discuss the propriety of contractor hiring of Defense Department personnel who have worked on weapons programs of interest to that firm—the so-called "revolving door".

The Defense Department should not be a personnel agency for its contractors; its job is to provide for our national security. Yet, according to Pentagon data, a total of 1208 revolving door reports (as required by 1969 law) were filed with the Defense Department in 1980 by military and civilian personnel who had taken jobs with defense contractors or moved from jobs with contractors to DOD employment. In 1981, the number rose to 1824, and to 2151 in 1983.[2]

These figures show steady growth over the numbers derived from the scattered data I and others had tracked for earlier years. In 1959, over 700 retired Pentagon employees accepted employment in the defense industry. Ten years later, Sen. William Proxmire reported that the top 100 contractors had hired over 2,000 former military personnel. Research in the mid-1970's suggested that 3,000 personnel had accepted employment with the industry between 1969 and 1973. In my 1981 study of eight leading contracting firms, I found that they alone had hired 1,672 former Pentagon employees between 1970 and 1979.[3]

This rather significant movement raises serious issues about the standards of behavior of DOD personnel, especially given the large sums of money which they control and the attractive employment opportunities they can consider.

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[1] *The Politics of Defense Contracting: The Iron Triangle*, (New Brunswick, N.J.: Transaction Press, 1982), esp. chapter 6.

[2] Data on private sector hiring of federal personnel is available only from the Defense Department. The only other such data—for NASA—ended when the NASA reporting requirement was abolished in 1981. 1984 data is not yet available from the Pentagon.

[3] See Leon S. Reed, "Military Manuevers: An Analysis of the Interchange of Personnel between Defense Contractors and the Department of Defense," (N.Y.: Council on Economic Priorities, 1975) and Gordon M. Adams, "The Politics of Defense Contracting: The Iron Triangle," (New Brunswick, N.J.: Transaction Press, 1982).

Despite continued public discussion of this issue, the Department of Defense maintains there is no problem. As Air Force Lt. Col. Michael S. Alba wrote to Rep. L.A. Bafalis in this issue on 23 June 1982:

We believe that the proper response is not to see or presume evil in every case but to carefully define wrong doing so that neither the individual nor the public suffers from the non-use of the skill of our former officers or employees. We believe that the proper balance has been struck in this regard.[4]

There is ample evidence, however, that the revolving door remains a major problem. Current law is designed to prevent illegal behavior, but current law applies largely to the behavior of government officials once they have left the government and are employed in the defense industry. Existing statutes (18 U.S.C. 207, 18 U.S.C. 281 and 37 U.S.C. 801) all prohibit former government employees from performing certain sales or representational functions with the government. The narrow or unclear use of language in these statutes—such terms as "selling" and "matters . . . . over which he had no responsibility"—are subject to criticism. In addition, my research suggests the need for real concern about the extent to which these statutes are enforced. Inadequate investigation and enforcement means that these laws cannot possibly prevent abuses. The ultimate proof of these statutes' weaknesses is that few, if any, cases are brought under them, despite the widespread attention to the revolving door problem.

THE PROBLEM OF TEMPTATION AND APPEARANCES

The core of the revolving door problem lies much deeper than the regulation of former employees' behavior. The problem is one of "temptation" and "appearances" in a subculture rich in money and job opportunities. This problem does not arise after a federal or military employee leaves office; it occurs while he or she is in office. It seems ironic, in fact, to be concerned about an individual's use of influence after he or she leaves government and to pay so little attention to the much greater influence a current government employee could exert over the terms and execution of a weapons contract, while anticipating employment with the contractor.

It is almost impossible to measure what is in a man's or woman's mind as they perform their official duties—negotiating contracts and contract changes, evaluating sources, managing a program or auditing a contractor. Many of our dedicated uniformed and civilian officials performing these duties do so in as independent and tough a way as we could wish. Others, as the sad and repetitive history of procurement waste and cost overruns shows, clearly do not.

The purpose of fashioning a more effective revolving door public policy is twofold: to remove any temptation for public servants to tailor the discharge of their job responsibilities to suit the needs of their future employer and to safeguard the contracting relationship from even the appearance of impropriety.

Is temptation a problem for the civil servant or military procurement officer? Listen to the 1974 testimony of former Assistant Secretary of Defense J. Ronald Fox:

The availability of jobs in industry can have a subtle, but debilitating effect on an officer's performance during his tour of duty in a procurement management assignment. If he takes too strong a hand in controlling contractor activity, he might be damaging his opportunity for a second career following retirement. Positions are offered to officers who have demonstrated their appreciation for industry's particular problems and commitments.[5]

Unfortunately the problem of temptation is still with us. Captain Jeffrey P. Rohm, Air Force officer and attorney assigned to Pratt and Whitney in Florida, captured the allure of the revolving door in a 1982 suggestion he proposed to the Air Force Plant Representative Office:

Recent history is replete with instances of AFPR's going directly to work for the contractor over which they had contract administration cognizance. As long as their

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[4] Letter supplied to the author.

[5] J. Ronald Fox, *Arming America: How the U.S. Buys Its Weapons*, (Boston: Harvard Graduate School of Public Administration, 1974), p. 61. The New York Bar Association came to the same conclusion in reviewing conflict of interest laws in 1960: "A conflict of interest does not necessarily presuppose that action by the official favoring one of these interests will be prejudicial to the other, nor that the official will in fact resolve the conflict to his own personal advantage rather than the government's. If a man is in a position of conflicting interests, he is subject to temptation, however he resolves the issue. Regulation of conflicts of interest seeks to prevent situations of temptation from arising." Special Committee on the Federal Conflict of Interest Laws of the Association of the Bar of the City of New York, *Conflict of Interest and Federal Service*, (Boston: Harvard University Press, 1960), pp 3–4, cited in Leon Reed.

activities do not include prohibited "selling" or "agency" as defined under 18 U.S.C. 207, 18 U.S.C. 208 and 19 U.S.C. 281 this is permissable. Unfortunately, the inevitable public perception is that past decisions of these key employees may have been influenced by their prospective employment. Regardless of any actual conflicts, the perception of influence and the susceptibility to improper temptations exist. Transfusions of key AFPRO and HQ personnel to a contractor over which they have cognizance appears infinitely more dangerous, and more likely to be impropriety in the eyes of the public, than the acceptance of many token gratuities.[6]

The temptations created by the culture of procurement are clear, real and immediate. The existence of such temptations make it essential to avoid even the appearance of impropriety. Appearances, themselves are crucial; they have a negative influence on the public's impression of the Defense Department and the behavior of its civil and military personnel. Appearances can also be harmful to the attitudes and morale of individuals still working in government agencies.

Col. Jack Finder, Staff Judge Advocate at the Air Force Contract Management Division, Kirkland Air Force Base, New Mexico in 1983 pointed out this problem to an Office of Government Ethics official:

Concerning post employment, Colonel Finder said that 18 U.S.C. 207 and our regulations do not deter the types of post employment problems typical of the Department of Defense. There is a large turnover of CMD [Contract Management Division] personnel, especially of AFPRO [Air Force Plant Representative Office] offices, who leave to work for contractors. For example, the head of AFPRO office at Northrop on Friday could become the Northrop Vice President for Quality Assurance on Monday and immediately AFPRO employee morale is destroyed. Employees openly discuss what the former employee has done over the past few years for the contractor in order to obtain the new job, and wonder why they themselves should be so ethical. AFPRO employees must deal with their former employee daily on many matters (Government appearing before and seeking data from the contractor) and feel betrayed that the contractor now has all the inside knowledge of how AFPRO operates. Colonel Finder said these types of cases are devastating to the ethics program because of the appearance of conflict of interest alone.[7]

THE NEED FOR NEW LEGISLATION

There is continuing evidence that the revolving door creates tension, temptations and problems of "appearance" for federal contract officials and can sap the credibility the public attaches to a defense procurement program. Contrary to the assertions of Justice Department lawyers, Pentagon officials and contractor executives the revolving door encumbers the steady and efficient management of defense production. We are spending too much on defense procurement to continue to run this risk. Temptations and real conflicts, when they occur, can diminish the effectiveness of any national security program and, conceivably, lead to wasteful spending of the budgets you have provided to the Defense Department.

Existing statutes on post-employment activities do not solve this problem because they fail to deal with temptation and improper appearances. As Col. Finder noted, statutes such as 18 U.S.C. 207,, "do not deter the types of post employment problems typical of the Department of Defense." From his point of view,as an officer directing an ethics program, "their biggest problem is AFPRO employees accepting positions with the defense contractors." [8]

I believe the need for new legislation is clear, but it must be framed carefully. Several bills have been proposed recently to deal with the revolving door and they deserve careful review by Congress. These bills include S. 385 (Sen. William Proxmire), S. 490 (Sen. David Pryor and, as H.R. 1201, Rep. Barbara Boxer) and S. (Sen. Carl Levin).

Any new legislation on the revolving door must, in my view, deal carefully with the following major issues:

(1) Legislation should be carefully defined so as to cover relevant revolving door cases, but not so broad that it covers every case, making oversight and enforcement excessively burdensome to the government.

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[6] "Suggestion" form supplied to the author.

[7] Jack Covaleski, "Trip Report: OGE Staff Reviews—Albuquerque, New Mexico" October 18–22, 1982, p.4. Joseph H. Sherick DOD Inspector General, made the same point in a 28 January 1985 letter to Rep. Barbara Boxer:

I agree with you that we need to address the problem created by the appearance of conflicts of interest, as well as actual situations, that arise when Government personnel accept employment with Government contractors.

[8] Covaleski, "Trip Report" p. 5.

(2) Legislation must be reasonable—that is, it should not make it impossible for departing employees to find work in the private sector and it should not deprive the private sector of the expertise acquired by government personnel.

(3) Legislation must focus on the source of the twin problems of temptation and appearances—the contracting relationship between government and industry.

(4) Legislation must not impose undue paperwork and bureaucratic burdens on government employees or on government agencies.

(5) Legislation should not leave us with a "fox in the chicken coop"—an agency policing itself with no outside review.

(6) Legislation must provide adequate information to government officials to determine possible violations.

(7) Legislation must be enforceable and contain clear guidelines on the enforcement process.

(8) Legislation must cover the many types of post-employment work with contractors, including consulting.

(9) Legislation should provide Congress and the public with adequate information on the problems.

(10) Penalties in the law should provide an adequate and enforceable deterrent.

I. SCOPE OF LEGISLATION

Existing statutes do not deal with the problems of temptation and appearance while employees are still working for the government, but only with the behavior of these employees after they leave government. A new statute should be framed as to remove temptation and improper appearances for personnel who are particularly related to the procurement process. A new statute should also cover a reasonably wide range of government procurement activity. And a new statute should provide some floor below which agency pesonnel are not covered.

All three pending bills focus on the procurement function. Proxmire covers "acquisition officers;" Pryor/Boxer covers personnel who "had significant responsibilities for a government procurement function;" Levin covers officials who "participated personally and substantially in the performance of a procurement function."

Beyond this language, however, any new legislation needs to provide a fairlydetailed list of procurement functions which the proposed statute would cover, including contract negotiation, award, approval and administration, contractor selection, contract change approval, quality assurance, payment approval, operational testing, program management, program termination and auditing. The Levin andPryor/Boxer bills provide relatively complete lists; the Proxmire bill slightly less so.

Finally, the new statute should be broad enough to cover significant policymaking employees but not so broad as to involve irrelevant or minor personnel. The test of "substantial involvement" is crucial, since it leaves out personnel who are less involved. The Pryor/Boxer bill leaves out the term "personally involved" found in Levin and Proxmire. This is probably wise, since this term could narrow coverage to those who participate in phone conversations and meetings and leave uncovered those who review, comment or have a significant paperwork role, but were not in meetings or phone conferences.

II. REASONABLENESS

A new statute should not be so broad as to inhibit government officials—civil or military—from finding employment once they leave the federal government. There is precedent, of course, for restrictions on post-government employment. Employees of the Federal Reserve Board and the Federal Deposit Insurance Corporation must live with similar restrictions. Even in the private sector, there are often contract provisions limiting an employee in terms of post-employment use of his or her expertise with certain companies.[9]

I would suggest that the key test of "reasonableness" is one described by the Congressional Research Service: that the restrictions not prevent all employment anywhere and not apply over unnecessarily long periods of time. Each of the bills meets this test. None of the three would deny personnel all job opportunities in the contracting industry; all would permit the industry as a whole to benefit from their expertise. Personnel are excluded from employment with companies affected in some way by their official decisions and activity while in office or in the military.

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[9] Jack Maskell, "Legal Analysis of 'Revolving Door' Proposal Regarding Employment with Government Contractors by Former Rederal Employees," Congressional Research Service, in *Congressional Record*, 27 January 1985, pp. S-2191-193.

Moreover, the extent of coverage of such a bill is not so sweeping as imagined. A great many people who leave the Defense Department, perhaps more than 90 percent, do not go to work for contractors at all. They would feel no effect of such legislation. The majority of personnel do no procurement work. Pilots, combat officers, technicians would face no problem. Finally, only a very few personnel deal with more than a few contractors; the number facing an industry-wide job problem would be small indeed.

Moreover, I agree that the prohibition should also be limited in time, as appropriate. The Levin bill would cover procurement actions for three years before departure from the government and extend for two years afterwards. The Proxmire bill covers the same three year/two year time period. The Pryor/Boxer bill covers a longer period—five years, defined to begin either on the expiration date of the contract the employee worked on or for five yers after separation from the government, if the contract is still in effect.

III. FOCUS ON THE CONTRACTING RELATIONSHIP

All too often, discussions of the revolving door deteriorate into the problem of "guilt." Critics who advocate greater arms length relationships between the government and its contractors are accused of suggesting that government officials are somehow "guilty" or potentially guilty. Moreover, government agencies may well be reluctant to investigate or prosecute cases under existing law because such an action would appear to punish excessively the individual, but not the contractor. The source of temptation and appearances is not the individual;it is the contractor and the contracting relationship over the specific programs.

Approaching the revolving door as a contractor problem removes the burden of proof from the individual and places it squarely on the contractor, who is, after all, the one offering the job. Instead of placing reporting and other requirements on the employee, the Pryor/Boxer bill requires the contracting company to file reports with an agency's Inspector General. These reports must list the former government personnel whom the contractor has hired, what past responsibilities employees had as government workers and their current job responsibilities with the contractor. Penalties for violations, too, fall squarely on the contractors. I think the DOD Inspector General's views on this approach have real merit:

H.R. 5922 [now H.R. 1201] treats the conflict of interest issue as a contractual matter and applies the contractual remedy of liquidated damages. In my opinion, this approach is more likely to be effective in discouraging "switching sides" since it hits the contractor where it hurts—his pocketbook. This can be a far more effective weapon than criminal sanctions in current law which are rarely employed.[10]

IV. BURDENS ON THE EMPLOYEE AND THE GOVERNMENT

New revolving door legislation should not impose excessive paperwork requirements on government employees, nor require new government procedures to review or analyze the reports. Some degree of paperwork will be inevitable; we cannot slow the revolving door without adequate enforcement, and this regrettably requires paperwork.

The Pryor/Boxer bill does not ask the individual to seek opinions or waivers; instead it places the burden on the contractor to provide necessary information to the agency's Inspector General, who would then review the reports. Though the individual's paperwork burden is reduced, clearly the agency is encumbered and this may have to be addressed. On balance, the Pryor/Boxer approach appears likely to generate a smaller burden than the other two bills.[11]

V. FOX IN THE CHICKEN COOP

The problem of appearances is important. New legislation should not leave review and enforcement solely in the hands of the agency for which the departing employee worked. The expertise and knowledge of that agency may be needed, but full scrutiny should also take place outside the agency.

The Levin bill asks the "Head of the Agency" in which the employee worked to make a determination on violations of law and of liability. This approach uses the

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[10] Sherick letter to Rep. Barbara Boxer 28 January 1985.

[11] The DOD Inspector General suggested that the bill could "place a significant burden upon the DOD Inspector General" and proposed that the DOD organization where the employee previously worked undertake this task and refer conflict cases to the Inspector General. Sherick letter p. 2.

agency's expertise, but might tempt the agency to deny there is any revolving door problem. The Proxmire bill would ask the Office of Personnel Management to undertake this enforcement task, which avoids the "fox in the chicken coop" problem. The Pryor/Boxer bill falls in the middle, since an agency's Inspector General would take on the enforcement role with outside review by the Office of Government Ethics.

VI. ADEQUATE INFORMATION FOR REVIEWS AND ENFORCEMENT

One of the major problems with current revolving door reporting is the inadequate information contained in the reports that former federal employees are now required to file with DOD. It is extremely difficult to decipher the actual work done by employees while in the government or afterwards with the contractor and impossible to tell what contract or weapons programs that employee has worked on while in government. A new law should make both of these pieces of information clear and available to whomever is charged with overseeing and enforcing the law.

None of the legislation meets this need fully, though to obtain an Office of Personnel Management (OPM) opinion provided for in the Proxmire bill an employee does need to provide information on his or her involvement with contracts held by the contractor offering the employee a job. The Levin bill requires information on the extent of contact between the individual and the prospective private employer. The Pryor/Boxer bill requirement of a report from the contractor would probably not, as it stands, provide adequate information, since it would only provide agency name, job title, and a summary of the individual's job responsibilities in the agency. This is little better than the information required in current reports.

VII. ENFORCEABILITY

One of the most serious weaknesses of current conflict of interest law and of the current revolving door reporting requirement is the almost total absence of adequate review and enforcement.[12] Cases are rarely brought under 18 U.S.C. 207. There is hardly any serious review of the reports filed by employees nor are there many prosecutions brought for violation of the reporting requirement.[13]

The proposed bills are uneven in the degree of enforcement they would provide. The Proxmire bill provides excellent review and good enforcement procedures. The bill requests an opinion from OPM and, when violations occur, it provdes for referral to the Attorney General for possible prosecution. In the Proxmire bill, however, no procedure is provided to give the Office of Personnel Management independent information about possible violations of the statute. In fact, there is no source of information save that included in an employee's requests for an OPM opinion.

The Levin bill leaves enforcement up to the employee's agency, and requires the agency to transmit reports to the Office of Government Ethics (and in turn to the Senate Governmental Affairs and House Government Operations committees). There is no provision for referral to the Department of Justice for possible prosecution, however. Save the good will of the departing employees in filing reports upon departure, these is also little independent source of information on possible violations of the law.

The Pryor/Boxer bill requests review of the contractor report by an agency's Inspector General and a random survey by the Office of Government Ethics (with a report to Congress). Again, there is no provision here for referral to the Department of Justice for possible prosecution. Moreover, there is no independent source of information to help the Inspector General determine possible violations of law. A stronger, enforced individual reporting requirement would help here, though it may involve duplicative paperwork for the employee.

VIII. TYPES OF POST-GOVERNMENT EMPLOYMENT

Current law does not cover a growing revolving door problem: the work of consultants to contractors. Government officials who become consultants may be providing contractors with crucial advice on contracts on which they worked, but they are not covered by current reporting requirements. The Proxmire bill does not clearly include consulting relationships in its coverage; the Pryor/Boxer and Levin bills clearly cover employment or compensation provided "through a third party."

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[12] Adams, *Politics of Defense Contracting*, Chapter 6, *op. cit.* and Reed, *Military Manuevers*, *op. cit.*

[13] See Florence Graves, "The Runaround," *Common Cause Magazine*, June 1982, pp. 18–23 for examples of officials who had failed to file required reports.

IX. INFORMATION TO CONGRESS AND THE PUBLIC

Disclosure is an important requirement in this area—without adequate information Congress and the public cannot know if the law is observed or enforced. Currently, the reports on file in the Defense Department are only loosely aggregated and the numbers then transmitted to the Congress. The reports themselves are on open file at the Pentagon, but their availability is not well known. Current law does not require a report to Congress evaluating these reports or noting further investigations or prosecutions.

The proposed bills help remedy the disclosure problem. The Proxmire bill provides for publication and congressional notification of OPM advisory opinions and for an annual report on activities required by the law. The bill does not, however, cover reviews of all movement of personnel from agencies to contractors.

The Levin bill asks the Office of Government Ethics to sample the reports transmitted from agencies and to send an annual report on the number of reports submitted and reviewed and any actions taken to the Senate Governmental Affairs and the House Government Operations committees. Again, there is no systematic review here of all personnel shifts and a random sample may not be an adequate review of what the reports disclose.

The Pryor/Boxer bill also calls for a random survey of reports from contractors and an annual report to Congress. Since these reports would contain all employment shifts, the sample could turn up serious problems, but it would provide less than a full review.

X. DETERRENT PENALTIES

Large fiscal penalties for individuals are not likely to be enforced; small fiscal penalties for contractors are not an effective deterrent. In the case of a violation, the Proxmire bill would fine individuals $5,000 or one year in jail. Contractors would be fined $25,000, or one year in jail. The individual fine here may be appropriate; the contractor fine would be, at best, a weak deterrent.

The Levin bill goes further, carrying a stiffer $10,000 fine for individual infractions, but a weak $50,000 fine for company violations.

The Pryor/Boxer goes the furthest—contractors would be fined the sum of an employee's annual salary times the number of days he or she was employed by the company. Here, the deterrent effect on a company is real indeed.

CONCLUSION

In sum, the proposed legislation moves the revolving door problem away from the current focus on individual activity and into an examination of the culture of procurement. Some more stringent new law is clearly appropriate—employment temptations offered by contractors are rampant and headlines are full of stories detailing the "appearance" of a conflict of interest. Reasonable legislative solutions exist. They do not unnecesarily burden the individual job seeker nor do they prevent the government from attracting qualified personnel.

A balance must be struck. We should not allow the industry's need for government-trained experts to bias those employees' policy-making decisions while they are still on the government payroll. The issues of national security are too important to permit this risk or even the appearance of risk to continue. Conflicts of interest should become an ever diminishing side-show, not center stage entertainment. This will only happen when these conflicts are properly regulated; they are not so regulated today.

Senator QUAYLE. I thank you.

I understand your main concern goes to regulation of prohibition while in Government not when they get out?

Mr. ADAMS. We are concerned particularly about where the person may go as they leave the Government. That is to say, we approve of the focus in most of the legislation restricting people from taking employment with contractors with whom they have had substantial, and some of the legislation says, personal involvement; those ought to be situations in which they cannot proceed to take a job.

This is not to bar them from accepting employment in the industry more generally.

Senator QUAYLE. I gather that the first thing you are talking about is the contract relationship while in Government?

Mr. ADAMS. That is correct.

Senator QUAYLE. That was your No. 1 concern?

Mr. ADAMS. Yes.

Senator QUAYLE. Now what additional prohibitions to those we already have on the book would you add while they are in Government?

Mr. ADAMS. What we need to deal with in the legislation is defining rather carefully those activities that a person performs with respect to a procurement function which would, as it were, leave them open to the law.

That is to say, what are they doing while in Government.

Senator QUAYLE. What would you prohibit them from doing?

Mr. ADAMS. I would not prohibit them from doing anything. I think the legislation needs to be fairly careful about what it is that people have had as their responsibility in the contracting function.

In other words, you are dealing with a fairly specific category of people, and I have listed in my testimony what those functions are, including contract management, contract changes, auditing, operational testing, the kind of activities that people need to be careful about when they are looking to private sector employment.

We are not prohibiting them from engaging in those functions. We are saying those functions are covered by law.

It is my sense from Mr. Taft's testimony that he has identified, I believe, 155,000 people—I am not sure whether his list is coterminus with the functions I described to you—who he feels are in that catchment area, have those functions and, therefore, would be affected by the law.

That has been described as many thousands of people and indeed it is.

At the same time I would point out it is just slightly over 5 or 6 percent of total Department of Defense personnel. We are not talking here about everybody who leaves the Department of Defense.

We are talking about people who are in a particular procurement-related function and, as most of the legislation provides, whose involvement with that function is significant, not just passing, temporary, or rather low level or meaningless.

Senator QUAYLE. What is our problem? Is our problem what they do while in Government or is our problem what they do when they leave Government and where they go? What is the problem?

Mr. ADAMS. The problem is the relationship between the two. We are dealing with people who, while they are in Government, are in a position to look forward to employment in an industry when they leave Government. The anticipation of that employment, unless carefully regulated, can lead them to be either tempted or, after they leave, to create the appearance, even where the temptation was not real or the conflict not acted upon, that something has corrupted the procurement process.

Senator QUAYLE. When they leave the Government, where are they going to go?

Mr. ADAMS. It depends on which of the statutes we are talking about. The Proxmire and Pryor bill and Senator Levin's bill, would prohibit a person from taking employment with a contractor with

whom they had personal, in some cases, personal and substantial, responsibility as a procurement officer while they were in the Government.

The prohibition is restricted in time—5 years or 2 years, or whatever. It suggests that they cannot for that period of time seek employment with those contractors or accept offers of employment from those contractors.

The rest of the defense sector—as the Under Secretary pointed out, there are probably 350,000 companies here—is open to them for job opportunities.

Senator QUAYLE. Again, your concern is where they go really after Government?

Mr. ADAMS. The concern is where they go after Government as it affects their performance while they are in Government. You can't legislate the performance in Government, you can deal with the temptation and appearance after they leave Government and broaden the arm's-length relationship with the contractors while they are in Government.

Senator QUAYLE. You are not concerned about adding more prohibitions or restrictions or trying to regulate behavior while they are in Government?

You are more concerned with where they go after they leave Government?

Mr. ADAMS. That is correct.

Senator QUAYLE. I thought perhaps there were some new prohibitions you might be recommending while they are in Government?

Mr. ADAMS. No. I am sorry, I did not make that clear. I meant to say the law ought to look at the kinds of activities they are engaged in while in Government in order to determine the cases to which the law——

Senator QUAYLE. Your ultimate concern is where they go, the problem is seeing where they go after having been employed by Government?

Mr. ADAMS. Correct

Senator QUAYLE. Is it your concern that they go to employers or to contractors that they did business with and then they in fact have substantial involvement in those particular contracts that they had oversight with?

Mr. ADAMS. We have made no determination, nor as far as I know in the legislation currently before the Congress in this area is there any determination, about whether they could accept employment with a company while being explicitly kept out of activities related to areas where they worked while in Government.

Senator QUAYLE. If they kept out of activities while working with the company, would you have a problem with that?

Mr. ADAMS. I think it is an interesting concept in theory. In practice you would have to be very careful about how you set up an information system to assure you could enforce it. I am not sure how easy it would be to enforce it.

At some point along the line you would need continuous and detailed reporting of that person's contractual responsibilities while working during that period of time with the contractor.

Senator QUAYLE. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

I am sorry I could not be here all afternoon because I am interested in the whole problem. You are to be complimented in having this set of hearings.

There are things on the floor today dealing with MX and a few things like that which I also have responsibility for.

As I understood you, and I am not sure I understood you completely, is your concern what they do after leaving, not while they are in Government? Is that correct? My concern is exactly the opposite. Maybe I misunderstood you.

Mr. ADAMS. I think what I tried to communicate to Senator Quayle, was the problem, as I see it, is the relationship between the two. That is to say, how does where an employee might go afterwards influence or tempt them to be influenced with respect to their actions while they are a Federal employee.

Senator GLENN. That is my concern, too. I guess I misunderstood that. I am concerned with contracting officers who may be looking for a job after they get out who are in a procurement position.

Some restriction on the company that they have dealt with specifically I think is in order, but not necessarily restrict them from that whole industry.

Mr. ADAMS. I think I share your view on that, as I understand it.

Senator GLENN. I would hate to lose the talents of those people who have had a lot of experience in the Pentagon in procurement matters. Ninety-nine percent of the people are just as dedicated as anybody in this room. They want to do the best job possible whether in the Pentagon or working for someone else later.

They want to see the country get the best value for every dollar spent. You have a few bad apples in the barrel every once in a while who would be willing to shove a contract to somebody before they left in order to guarantee a job later.

You would have no objections as far as people going to the same industry so long as it was not the contractor?

Mr. ADAMS. Not only would I have no objection, but I think the law has to be carefully crafted to make sure we have not shut people out from post-Government employment opportunities.

We really have to be sure that people can find jobs and their expertise should be available to the industry. Very often we are told you are trying to deny the industry their expertise. That is not the point at all.

If the expertise is genuine, it should be available and should be relevant to the concerns of many companies that the person may not have supervised contracts with while they were with the Department of Defense.

Senator GLENN. Thank you.

Senator QUAYLE. Thank you very much, Mr. Adams.

Our final witness today is David Martin, Director of Government Ethics, Office of Personnel Management.

Mr. Martin, I am going to ask you to put your testimony in the record. I just have a couple of questions. I have to be somewhere at 4:45.

STATEMENT OF HON. DAVID MARTIN, DIRECTOR OF GOVERNMENT ETHICS, OFFICE OF PERSONNEL MANAGEMENT

Mr. MARTIN. I have to be somewhere at 5, so that is quite acceptable.

Senator QUAYLE. We will place your full testimony in the record. I am sorry I did not read your statement.

How big a problem do you think it is?

Mr. MARTIN. I don't know. I don't think anybody does.

Senator QUAYLE. Do you have any idea? Give us a clue.

Mr. MARTIN. Just based on the number of people moving in and out of Government and especially from the Defense Department, I think you have a potentially enormous problem.

You see, I have heard a lot of discussion here about people moving in and out. I don't know if that is the problem. I think we have created a Government where we rely on each other and the expertise from the private sector is needed in Government and some Government expertise is certainly needed to administer some of these contracts on the outside.

I think, to know the enormity of the problem, you would have to determine not only the number of people who leave Government and go to work for private industry who have also administered a contract and they go to work for the company that got that contract with the Government, you would have to know how much less efficient was someone while they were in Government or what subjective influences were made on those persons that they would not have had if they had not gone to work for that company.

I think if you are going to make a true measurement, that is a very difficult thing to do. Just to pass legislation based on the numbers of people passing back and forth from private industry to Government and back, I think may be premature.

Senator QUAYLE. I think you want to encourage them, quite frankly, going back and forth. We need to get some of our key people from the private sector into Government, to have Government service, because, as a matter of fact, we have to have a great deal of our expertise come from the private sector from people who come in.

You look at history, the great decisionmakers and opinionmakers and people who have had a lot to say where the country has gone have come from the private sector and served for a time and gotten out. I don't think we want to deter that.

We want to make sure not only that behavior while in Government, but also conflict of interest once they leave Government is certainly amplified.

Since you don't know how big a problem it is, I guess you don't have a lot of specific examples or cases that are pending——

Mr. MARTIN. Let me make a comment.

Senator QUAYLE [continuing]. On conflict of interest or improprieties?

Mr. MARTIN. Post-employment, there are a lot of cases, but they never come to trial because we deal with them before they ever become a problem. Our office deals in a lot of prospective advising. We, of course, are concerned with the integrity of the decisionmaking process in Government as well.

When someone leaves Government who is a senior employee, frequently they will contact our office and say, I am considering going to work for thus and so. Is it a 207 problem or do I have a 208 problem if I negotiate for employment?

We do a lot of advising and, of course, disseminate our opinions throughout the Government. A lot of these problems are taken care of before they become apparent violations or actual violations.

I think the word is out among at least high level people in the Government and if they are contemplating employment with a law firm or a big company, leaving defense or commerce, frequently we will be asked to give an opinion and we do.

Among lower level individuals and to whom maybe 207 does not apply, that 1 year cooling off period, maybe they don't seek advice from us, but they might be seeking it from their ethics counselor.

We do a lot of public speaking in agencies and we try to disseminate, look, if you get into any problems, you have any questions on leaving the Government while you are in Government, if you have a financial interest, contact your ethics counselor and let him know.

Senator QUAYLE. Do you have jurisdiction over actual cases that are filed alleging conflict of interest or violations of standards once they leave Government?

Mr. MARTIN. That is a Department of Justice function. We do interpret that law along with the Department of Justice.

Senator QUAYLE. Your function is basically prospective; is that right?

Mr. MARTIN. Yes, it is.

Senator QUAYLE. In other words, you don't have a handle on how many cases have been filed or allegations that have been made?

Mr. MARTIN. Under 207?

Senator QUAYLE. Yes.

Mr. MARTIN. There are not many. My recollection is maybe one or two prosecutions. It is limited. It may be because we are dealing with it before it occurs.

Senator QUAYLE. If we are dealing with it before it occurs, that is fine with the law.

The question is whether we need to tighten up the law or expand the prohibitions. There has been conflicting testimony today. You have sat and listened for the last 2½ hours of testimony.

From your viewpoint, do you have any advice about areas that we ought to give additional clarification to that might be helpful to you in giving counsel to people who are going out to the private sector?

Are there some gray areas that might need some tightening up?

Mr. MARTIN. I agree with much of the testimony about the subjective influence. I do believe it exists, but I don't know how to deal with it. I think you cannot make an appearance problem a violation of law. I think it is unenforceable.

I think there are certain constitutional freedoms of association problems with restricting where you can go to work and for whom you may associate when you leave the Government. I think it would be counterproductive to limit, certainly as Senator Glenn suggests, going into an industry or even to prohibit somebody from going to work for a company.

The furthest I would go in that area is to maybe prohibit somebody as we do in the legal profession now, through bar association rules, prohibit somebody who has had substantial participation in the Government from going and participating in a matter in that company.

But how would you ever enforce that, I don't know. I don't know how you would. It is just like now these laws we have on the books are difficult to enforce once somebody leaves the Government.

Senator QUAYLE. I guess under the enforcement bit there would have to be some sort of certification or statement by the company, once they hired this individual that has substantial involvement with the contract, that they in fact were not going to allow this individual to work on the contract and if they violate that, then you have to look at what penalties there would be.

Would that be a way to enforce it? Would that be perhaps the most direct way to enforce it? Is that where the burden would have to be?

Mr. MARTIN. That would be self-enforcing and I think it would be. You would have to build what we do in law firms now, what we call a Chinese wall. That is, you insulate that person from any contact with the people who are administering that contract when he is in the firm.

How far do you go? Do you limit it to advising or recommending? I don't know. Let me give you an example.

In the 1978 Ethics Act the 1-year cooling off period prohibited advising and assisting in any way for 1 year. There was a hue and cry in the scientific community and in the legal community about that really is an onerous and burdensome thing to do to us for 1 year.

So that was amended, I think in less than a year to say, OK, you may not aid and assist a company, that is, going back and dealing with your former agency by personal presence either in the courtroom or before the agency.

So, there are considerable problems in restricting professionals from leaving the Government, and supporting them and finding a job. There was tremendous sympathy for amending that law once it was passed.

I think you will find the same thing again.

Senator QUAYLE. Thank you very much. We may want to pursue some other questions with you. I look forward to your testimony and appreciate your appearance.

Mr. MARTIN. It is my pleasure. I think it is well you are looking into this. I think it needs looking into.

I think you also need to examine very carefully what the problem is before you enact a solution that may make the situation worse than it is already.

Senator QUAYLE. I tend to agree.

Thank you very much, Mr. Martin.

[The prepared statement of David Martin follows:]

PREPARED STATEMENT OF DAVID MARTIN, DIRECTOR OF GOVERNMENT ETHICS, OFFICE OF PERSONNEL MANAGEMENT

Mr. Chairman and members of the subcommittee: I appreciate the invitation to appear before this subcommittee to answer questions which the committee members

may have on limitations on post-government employment, or the so-called "revolving door" issue. I would provide the following observations.

As you all know, the Ethics in Government Act which was signed into law on October 26, 1978, was enacted to preserve and promote the integrity of public officials and institutions. Title V of the act amended title 18 U.S.C. section 207, criminal provisions designed to disqualify former officers and employees from participating in matters relating to their previous official activities and responsibilities. Sections 207(a) and (b) are designed to prevent any former employee from "switching sides" and representing a private client in the same matter for which he had previously represented the Government. Section 207(c), since it is not limited to matters in which the employee was involved, rests on a different theory. It interdicts attempts by former high-ranking employees to exercise influence over their former colleagues and subordinates. A public policy-maker who leaves office is not permitted to benefit from his Government experience by exploiting any "clout" with his former agency for one year.

Post-employment restraints should accommodate the need to attract and retain a qualified and experienced work force and should recognize that there are advantages associated with the movement of employees back and forth between Government and the private sector. The Government could insist upon a strict standard of separation between its employees and the private economic world, if it kept Government and Non-Government operations clearly separate. In the present system, we do not. We staff our positions with temporary in-and-out appointees. We contract out big Government jobs—and then must find liaison men to brief both sides. We have deliberately constructed institutions of dual, or blended loyalties, and must be prepared to live with the potential conflict of interest consequences. The result is that any program of restraints for the Government must be content with approximations. There must be a proper balancing between maintaining integrity and ensuring an able work force.

I would like to close my remarks with a simple quote which has been attributed to Bayless Manning, one of the foremost commentators in this field of law. Mr. Manning suggested that "Plato's philosopher kings could isolate themselves from private interests: America's democratic Government cannot." I would hope that this thought would assist the committee in their deliberation here this morning.

[Questions submitted by the Senators of the Senate Armed Services Committee's Defense Acquisition Policy Subcommittee to be answered for the record follow:]

Questions Submitted by Senator Alan Dixon

DEPARTMENTAL REFERRALS FOR PROSECUTION

Senator Dixon. Has the Department of Defense made any referrals to the Department of Justice for prosecution under 18 U.S.C. § 207, or any other "conflict of interest" statute? If yes, do you know the disposition of those referrals?

Mr. Taft. Cases may be referred to the Department of Justice by officials at any level of any component of the Department of Defense. There is no existing recordkeeping process to produce the requested figures. However, the Department of Defense Inspector General has collected information relating to the investigation of apparent violations of the standards of conduct rules by present and former DOD officers and employees. This information has been provided to the Committee separately.

Senator Dixon. Has the Department made any referrals to the Department of Justice for prosecution for retired civilian or military officers for *failing to file the reports* required under 10 U.S.C. § 2397?

Mr. Taft. Again, there has been no central recordkeeping procedure established. We are not aware of any such referrals.

SCOPE OF COVERAGE OF CURRENT REPORTING REQUIREMENT TO DOD

Senator Dixon. Coverage under 10 U.S.C § 2397 (the reporting requirement for DOD employees) covers contracts that "were awarded by *negotiation* . . . that involve at least $10,000" and which in any one year aggregated $10 million for a contractor. Do you believe that coverage merely of that old reference to "negotiated" contracts and excluding those which were awarded by "formal advertising" serves the purposes for which the reporting requirement was put into place?

Mr. Taft. There is very little legislative history to explain the purpose of the reporting requirement. It is our view that the principal purpose was to help the Con-

gress and the public gain an understanding of the volume of the employment movement between DOD and its principal contractors. The identification of the contractors having over $10,000,000 in negotiated contracts per year is a valid way to select such contractors.

Senator DIXON. Should the reporting requirement go to all types of Federal contracting, not only those that were awarded by "negotiation?"

Mr. TAFT. The "negotiation" criterion probably was selected on the theory that there are more opportunities for awards to be influenced improperly when they are negotiated than on those occasions when awards are made by formal advertising. The Department of Defense would not object to the broadening of the reporting requirement if the expected benefits match the increase in the volume of the associated paperwork. We have no evidence that increased reports would deter wrongdoing but concede that this change in the reporting standards could improve public perceptions of the integrity of the procurement system.

Senator DIXON. Shouldn't we at least update the reporting requirement to reflect the changes to the types of contracting activities (i.e., competitive, competitive negotiation, and sole source) that were adopted in the procurement laws last year?

Mr. TAFT. The Department would not object to these proposed changes.

Senator DIXON. Is the threshold of $10 million too high, or too low, for the Department to identify potential conflict of interest problems that may arise from former employees leaving Government service to work for defense contractors?

Mr. TAFT. We have no evidence that a change in the threshold would improve the quality of the reporting system.

Senator DIXON. Under the current reporting requirement, does the Department receive enough information from the reports filed by former employees to know whether a former Defense employee is violating, or has violated the law? (The law states only that the report shall contain "a brief description of the duties and work performed by the person for the defense contractor" and a "brief description of the duties and work performed by the person while on active duty or performing civilian service for the Department during the 3-year period before that duty or service ended.")

Mr. TAFT. No.

Senator DIXON. The "reporting law" also provides that the Secretary may ask for "other pertinent information as the Secretary requires." In implementing this reporting requirement, has the Department requested any additional information beyond the minimum which the statute calls for?

Mr. TAFT. Not yet. We are, however, willing to use the cited authority to expand the reporting requirement. At least one of the legislative proposals under consideration by the Congress will require such expanded reports. Even if it, or a similar requirement, is not enacted by the Congress, the Department will make these changes but will use existing authority.

PROHIBITION FOR CERTAIN EMPLOYEES

Senator DIXON. Are there certain types of employees, such as the Director of Central Intelligence, that there may be an appropriate policy determination made that these individuals should be barred from post-Government employment with certain Government contractors?

Mr. TAFT. Because of the potential for appearances of impropriety, there may be positions that should be included within a bar against employment by certain contractors. The positions of contracting officer and project manager may be considered in that category. The Director of Central Intelligence is not an official of the Department of Defense and thus it is not appropriate to make any recommendation regarding the inclusion of that position.

Senator DIXON. Most of the legislation has focused on those involved in the acquisition process. What individuals in that acquisition process should we focus on if we are concerned about the "temptation" of Government employees not to vigorously discharge their responsibilities? How could we define those acquisition personnel that should be subject to such a limitation?

Mr. TAFT. Presumably, the persons most vulnerable to improper influence by contractors are those who work directly with contractor personnel and who have some decision-making authority. We do not have any shorthand title that would encompass all of these positions. Probably the most practical approach would be to set out the general standards in the statute and authorize the Secretaryof Defense to designate positions by regulations. Alternatively, the position descriptions could be analyzed and job titles expressly included in the legislation itself. We have begun work to identify such titles and will furnish a list to the Committee soon.

Senator DIXON. Would it be reasonable to impose limitations on certain *acquisition personnel* who have been "personally and substantially" involved in some contracting roles that we might want to try to define from taking a position in *the one company which that employee has substantial dealings with?*

Mr. TAFT. Very few acquisition personnel have substantial dealings with only one contractor. Quality assurance personnel located in contractors' plants are among the few exceptions. Most acquisition personnel, even those involved in major system procurement, work on a regular basis with many contractors. Over a three year span of Government service, the period covered by most of the legislative proposals, the typical Government acquisition official may be personally and substantially involved with hundreds of contractors. This situation makes it difficult to craft a legislative remedy to the "appearance of conflict" problem without imposing substantial employment limitations on the majority of the persons who perform acquisition duties for the Department.

ALTERNATIVE TYPES OF LEGISLATIVE PROHIBITIONS

Senator DIXON. Some have proposed an outright legislative ban on certain types of post-employment practices. Others have suggested the use of a standard clause to be included in all future Government contracts. If any type of prohibition is to be legislatively adopted, what are the relative merits and drawbacks to these two approaches?

Mr. TAFT. We see only one significant difference between the two approaches: a legislative ban may include criminal penalties.

APPROPRIATE TIME PERIODS OF POST-EMPLOYMENT LIMITATIONS

Senator DIXON. If we were to put a limitation on post-employment practices to limit the "temptation" of Federal employees to be less than zealous in their jobs, what period of time would be appropriate to minimize that temptation? Would 1 year be enough? Two years? Is 5 years too long? (Each of these time periods has been used in one of the legislative proposals already introduced.)

Mr. TAFT. Under all of the current legislative proposals there are two time periods to be considered. The first is the final period of Government service *before* departure during which dealings with contractors must be documented. The second is the period *after* departure when employment opportunities will be limited. We believe both periods should be kept as short as possible.

The volume of records to be kept on each employee will be extensive and must be maintained continuously as few employees know when they have entered their last three years (or any other specified period) of Government service. Reorganizations, reductions in force, health problems and other reasons all may affect the departure date. Shortening this time period will help alleviate the reporting burden. We suggest that one year is an adequate pre-departure period.

The post-departure period also may be shorter than those in current legislative proposals. *Any* break between departure from the Government and employment by a contractor should improve public perceptions. We propose that the period be no longer than 6 months.

IMPOSITION OF APPROPRIATE PENALTIES

Senator DIXON. Some have proposed criminal penalties for the violation of further statutory restrictions on post-employment practices. Others have suggested only civil penalties against companies hiring "prohibited" employees. Still others have suggested liquidated damages as part of a clause included within DOD contracts. What are the relative strengths and weaknesses of each of these alternatives?

Mr. TAFT. The penalty issue should be approached with caution. If a penalty is severe, or if it could be innocently incurred by a contractor, it may cause contractors to avoid hiring *any* former Government officers or employees. For this reason we believe that penalties should be assessed against the former Government personnel rather than the contractors. In most instances all of the knowledge that the contractor has regarding a prospective employee's prior involvement in the contractor's work will have to come from the individual job applicant. Few contractors will risk major penalties if their sole information comes from a party in interest.

Because we understand that the legislation under consideration is intended principally to address the "appearance" of impropriety and not actual misconduct we see no need for new criminal penalties or for large civil penalties. Of course, existing criminal penalties will remain in force. Assuming penalties against contractors are necessary, we believe the two alternatives are approximatelyequal in merit.

Senator DIXON. In your experience, have our current conflict of interest and financial disclosure laws kept otherwise qualified individuals who were interested in working within Government from coming into Government? Of these two laws, do you have an opinion as to which has had the greatest impact on keeping qualified people out?

Mr. TAFT. The motives for people seeking or declining opportunities for public service are many and are complex. It is difficult to evaluate the effect of these two laws or their relative impact. Both of them will deter some prospective public servants. It is likely that laws imposing postgovernment restrictions will be matters of concern for persons considering entry into Government service at *any* grade level. The financial disclosure rules may be expected to be of most concern to those who have acquired significant financial assets.

Congressman Otis Pike, just prior to his retirement and during the debates leading to enactment of the statutory financial disclosure requirement, commented on the burden that it would impose (Congressional Record, September 20, 1978, p. H 10177). He noted that financial disclosure would be distasteful to those who treasure their privacy. It would not discourage *all* businessmen from public service, in his view, but only *successful* businessmen.

Senator QUAYLE. The subcommittee is adjourned.

[Whereupon, at 4:40 p.m., the subcommittee adjourned, subject to the call of the Chair.]

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